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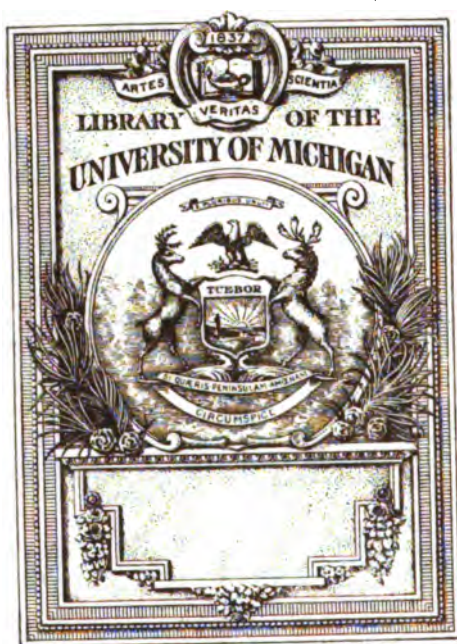
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STATUTE LAW-MAKING
IN IOWA





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IOWA APPLIED HISTORY SERIES
EDITED BY BENJAMIN F. SHAMBAUGH

STATUTE LAW-MAKING IN IOWA

EDITED BY
BENJAMIN F. SHAMBAUGH

APPLIED HISTORY
VOL. III

PUBLISHED AT IOWA CITY IOWA IN 1916 BY
THE STATE HISTORICAL SOCIETY OF IOWA



EDITOR'S INTRODUCTION

SEVEN years ago The State Historical Society of Iowa, inspired by that larger view of history which includes the social and economic life of man, announced that its program of researches and publications would include Applied History — the foundations for which were even then being laid in the *Iowa Economic History Series*.* Three years later Applied History was defined as the use of the scientific knowledge of history and experience in efforts to solve present problems of human betterment. As thus defined Applied History comprehends impartial investigation, scientific interpretation, and expert definition and application of standards: it frankly recognizes the fact that public service to be efficient must be guided by open-minded experts — by men governed by knowledge, reason, and high-mindedness.

The practical use of the creative power of scientific knowledge in politics and administration is suggested by the sixteen monographs which constitute the body of the two volumes of the *Iowa Applied History Series* heretofore issued. Indeed, it is apparent that the greatest possibilities of Applied History are in the field of State legislation, where

*For the first mention of "Applied History" see brief address by Benj. F. Shambaugh published in the *Proceedings of the Mississippi Valley Historical Association*, 1908-1909, p. 137.

legislative reference, scientific research, and expert bill-drafting may be combined into a constructive method of scientific statute law-making. It is equally clear that the successful creation of statute law depends quite as much upon method and form and language as upon the materials used in the process. It is, therefore, appropriate that the *Iowa Applied History Series* should contain a volume devoted largely to the methods and forms of statute law-making.

During a period of seventy years — that is, from 1846 to 1916 — the records show that there have been introduced into the General Assembly of Iowa a total of nearly 29,500 bills and joint resolutions. Of these approximately 8000 passed both houses and were placed upon the statute books; while about 21,500 fell by the wayside. To those who are alarmed at the tendency of the legislature to add to the volume of the statute law at an ever increasing rate, it may be something of a relief to learn that there were actually fewer bills introduced in the General Assembly in 1915 than in 1913, and that the mortality of those presented was actually greater in 1915. May it not be that the tide has turned, leaving a high-water mark in 1913 when the Thirty-fifth General Assembly witnessed the introduction of 1297 proposed measures and recorded 410 entries on the statute books?

Academic critics and newspaper paragraphers biennially take their fling at the lawmakers, who in their eyes seem to be possessed of a passion for mak-

ing statutory enactments. But to minds familiar with the methods of nature, or tempered by experience in the ways of political accomplishment, it may appear that our legislators have not done so badly after all. The science of legislation is experimental: many attempts at solving the varied problems of statutory regulation must be made before the right formulas are hit upon. Is the scientist in the laboratory discredited because he tries experiments, or because one-half or three-fourths of his efforts fail? The Commonwealth of Iowa is a great political laboratory in which lawmakers are experimenting in the regulation of human conduct. Should we expect more of these workers than of those who labor under the more favorable conditions which prevail in other types of laboratories? The critics should remember that no sooner is a statute enacted than the conditions which called it into being change — sometimes through the caprice of man.

“Legislation is largely based upon grumbles — they used to be called grievances.” And so the important task of the legislature is “to remove discontent and to avert revolution, by making laws which adapt the political, administrative, and economic arrangements of the country to the requirements of the times”. In a world that is moving and changing there will always be an insistent and imperative demand for fresh legislation and for the repeal or the alteration of many old statutes. Where there is much legislation there will always be protests against over-legislation; and where statutes are en-

acted by popular legislatures there will always be criticism of the form, the language, the accuracy, and the consistency of the laws. "These protests", it must be admitted, "are often justified. Much modern legislation is crude, hasty, unwise. Much of it proceeds from an imperfect conception of what is needed and what is practicable." On the other hand much of the criticism indicates an imperfect knowledge and "appreciation of the difficulties with which modern legislators have to contend, and a misconception of the task which popular legislatures have to perform."*

The scope of this volume is clearly indicated by the titles of the several monographs presented. A brief account of the history and organization of the legislature in Iowa is followed by a discussion of the character and extent of its law-making powers. The methods employed in the enactment of statutes precedes a somewhat detailed consideration of their form and language. Then comes a brief account of the Iowa codes of statute law and the process of codification. Judicial interpretation and construction of statutes are rightly considered from the standpoint of adjudged cases in this State. The imperfections in the form and language of enacted statutes inevitably leads to a consideration of the methods of bill-drafting. Nor would the book have been com-

*The quoted passages in the paragraph are taken from Ilbert's *The Mechanics of Law Making*, pp. 12, 191, 187.

plete without a special consideration of the committee system and the abuses which are connected with statute law-making in this and other jurisdictions.

Throughout the volume an effort has been made to handle the varied aspects of statute law-making in a broad, practical, human way — to the end that the book may be of real service to draftsmen and legislators as well as to students of history and government. Thus, legislators will find that the monograph on the *Methods of Statute Law-making* may be used as a manual of legislative procedure in Iowa; while draftsmen engaged in the writing of bills will obtain helpful guidance from the *Form and Language of Statutes*, the *Interpretation and Construction of Statutes*, and *The Drafting of Statutes*. A careful reading of the entire volume will orient both legislators and draftsmen in the manner of making statutes and acquaint them with some of the actual political conditions under which bills are enacted into law at the State House.

While the emphasis in these pages is placed upon methods and forms, it would be a grave mistake for any legislator to conclude that good laws surely follow the use of good methods. On the contrary, he ought never to forget that high class legislation is the product of statesmanship. Nor should it be thought that the drafting of bills is something of a clerical job involving the application of rules and forms in a mechanical way. To be able to write high class statutes the legislative draftsman must be a man of knowledge. He "should know the law. He should

know the facts. He should know exactly what he means to do. He should know how to express his meaning clearly." He should understand the political conditions under which a popular legislature operates, and he should appreciate the practical maxim that "bills are made to pass". His labors "may involve a good deal of historical research". Above all, if a legislative draftsman is to do his work well "he must be something more than a mere draftsman. He must have constructive imagination, the power to visualize things in the concrete, and to foresee whether and how a paper scheme will work out in practice."* And he must remember that acts of legislation are addressed to the people rather than to lawyers.

Although "statute law reform is one of those things which everyone praises in the abstract, but about which, in its concrete form, no one is enthusiastic", it is nevertheless hoped that these pages may do their part in furthering such reform. To prevent a possible misunderstanding it may be well to explain in this connection that advocacy of the use of experts in the drafting of bills is not an endorsement of the doctrine that all government should be managed by experts. Government by experts is one thing: government with the aid of experts is quite another matter.†

*Compare Ilbert's *The Mechanics of Law Making*, pp. 15, 70; Ilbert's *Legislative Methods and Forms*, p. 240.

†Compare Ilbert's *Legislative Methods and Forms*, p. 113; Ilbert's *The Mechanics of Law Making*, p. 76.

This volume is a product of coöperative research. The conception of the book and the preliminary outlines of its several parts came from the Editor, under whose direction the researches were carried on and the component monographs were written. In perfecting the working outlines, collecting the necessary data, and compiling the nine monographs the following researchers coöperated with the Editor and with each other: Dr. F. E. Horack, Dr. Dan E. Clark, Mr. Jacob Van der Zee, Dr. O. K. Patton, Dr. John E. Briggs, Dr. I. L. Pollock, Mr. Geo. F. Robeson, Mr. C. Upham, and Mr. John M. Pfiffner.

Following an informal agreement upon the preliminary outlines and the individual assignment of the several subjects of research, a group of four of the researchers (namely, Dr. Briggs, Dr. Pollock, Mr. Robeson, and Mr. Upham) compiled, under the direction of the Editor, a researcher's reference index to the journals of the two houses of the Iowa legislature from 1838 to 1916 — a task involving the careful examination of over 83,400 pages of printed matter. Likewise 13,600 pages of the sessional volumes of Territorial and State statutes were examined for typical forms and characteristic language used in the making of Iowa statutes.

It would be difficult to estimate the mutual indebtedness of the researchers who collaborated in the production of this volume. For material, for suggestions, for ideas, and for inspiration each is indebted to all and all to each. In the compilation of the tables on Senate and House standing committees

Dr. Horack was assisted by Mr. Pffner; while Dr. Patton is under obligation to Mr. Upham for the collection of important data illustrative of the methods of legislation. Miss Helen Otto and Miss Ruth Gallaher of the library staff of the Historical Society assisted throughout in the critical work of verification and proof-reading. The indebtedness of the authors to other writers and writings is sufficiently acknowledged in the notes and references. The index is the work of Dr. Dan E. Clark, who assisted in the editing of the several manuscripts of the authors.

The State Historical Society and the authors of these pages are grateful to Mr. W. C. Ramsay, Chief Clerk of the Iowa House of Representatives, and Mr. Tom Watters, Jr., Secretary of the Iowa Senate, both of whom gave generously of their counsel — especially in regard to those parts of the book which relate to legislative methods and procedure. Thus it will be seen that care has been taken to supplement the researches of the authors by the counsel of men of experience in the actual processes of law-making.

Justice Horace E. Deemer, of the Supreme Court of Iowa — always generous in counsel and encouragement in connection with the researches of the Historical Society — read the proof-sheets of Dr. Patton's paper on the *Interpretation and Construction of Statutes in Iowa* and offered valuable suggestions on some of the more difficult points therein discussed.

Finally, it is frankly and cheerfully acknowledged

that the attitude of the President and members of the Board of Curators is always an important factor in the successful prosecution of the researches of the State Historical Society — especially along the lines of Applied History. The service which this governing body has rendered to impartial research in maintaining conditions of absolute freedom in all of the scientific investigations and publications carried on under the auspices of the Historical Society can not be overestimated.

Although the ground covered by this volume has been examined with patience and diligence and every page of the manuscripts of the authors verified with great care, it is too much to hope that every nook and corner of the field has been discovered, or that the book as printed is without error or omission. For the area of inquiry was new and for the most part unexplored. At places the forest of codes and statutes was so dense as to shut out the sunlight and obscure the objects of the search; while thickets of legislative proceedings, rules, usages, precedents, and orders rendered traveling difficult and at times almost impossible. The meanderings of judicial interpretation and construction were only less confusing than the entanglements of legislative procedure and parliamentary law. Nor were evidences of the influence of pre-election promises, patronage, perquisites, and privileges more elusive than the proofs of illegitimate lobbying and log-rolling. In this pioneer journey into the unexplored regions of statute law-making in

Iowa it is too much to expect that the trails of the researchers would be left altogether free of brush and stones: the paths of research become smooth only after they have been traveled by many scholars.

BENJ. F. SHAMBAUGH

OFFICE OF THE SUPERINTENDENT AND EDITOR
THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY IOWA 1916

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**HISTORY AND ORGANIZATION OF THE
LEGISLATURE IN IOWA
BY
JOHN E. BRIGGS**

INTRODUCTION

THE history of statute law-making in Iowa may be said to have begun in 1838 with the organization of the Legislative Assembly under the provisions of the Organic Act of the Territory. In 1846 the Legislative Assembly was succeeded by the General Assembly which, first under the Constitution of 1846 and later under the Constitution of 1857, has continued to be the statute law-making agency of the State down to the present day. To be sure the Governor has always been a factor in legislation; but as a force in statute law-making he may be considered a constituent part of the legislature rather than a coördinate agency.

During the whole period of seventy-seven years over fifty volumes of statute laws have been enacted; and to-day the body of this law, with all temporary and obsolete acts omitted, fills two large tomes, containing altogether 5357 pages. It is not, however, the purpose of this brief account of the history and organization of the legislature in Iowa to give more than incidental attention to the content or character of the laws that have been enacted. Nor is it within the purview of these pages to discuss the history and organization of any of the administrative and local agencies of legislation.

The advantages of handling the materials of this paper topically are evident; and equally obvious are the reasons for discussing all of the subjects first for the Territorial period (in chapters I, II, III, IV, V, VI) and

then for the State period (in chapters VII, VIII, IX, X, XI, XII). Possible confusion of the two periods may be avoided by bearing in mind that the legislature of the Territory was known as the Legislative Assembly, while that of the State is called the General Assembly.

It is evident that an exhaustive account of the history and organization of the Iowa legislature could not be compassed within the space allotted to this subject; and so the object has been to include and emphasize only those features which seemed to be germane to a book on statute law-making.

I

COMPOSITION OF THE LEGISLATIVE ASSEMBLY

THE act of Congress which created the Territory of Iowa in 1838 vested the law-making authority in a Legislative Assembly composed of two houses, a Council and a House of Representatives. During the eight years of the Territorial period this Legislative Assembly met annually. It was twice convened in extra session, first in 1840 and again in 1844. From 1838 to 1841 the legislators convened at Burlington, and thereafter at Iowa City. Before occupying the permanent Stone Capitol at Iowa City in 1842 the two houses sat in temporary quarters ill-adapted to the business of making laws.

ASSEMBLY DISTRICTING AND APPORTIONMENT OF MEMBERS

The Legislative Assembly of the Territory of Iowa was composed of thirty-nine members, thirteen of whom formed the Council and twenty-six the House of Representatives. Such, indeed, had been the composition of the legislature of the original Territory of Wisconsin: apparently Congress had found no reason for a change. A quorum in either house consisted of a majority of the whole number of its members; but any number of members could adjourn from day to day, and in the House of Representatives after 1840 any five members, including the speaker, could compel the attendance of absent members.¹

Representation in both the Council and the House of Representatives was based on population, the apportion-

ment of members being made as nearly equal as possible among the several counties. The Organic Act provided that the Governor should make the first apportionment, which was to be based either upon a special census authorized by him or upon the returns of an enumeration taken within three months previous to July 3, 1838.

One of the first acts of Governor Lucas upon his arrival in Iowa on August 15, 1838, was to divide the Territory into electoral districts. Inasmuch as a census had been taken in May under the authority of the Wisconsin Territory, the Governor, on the afternoon of his arrival at Burlington, issued a proclamation districting the Territory, apportioning the members of the Assembly, and providing for the first general election.²

According to the Governor's proclamation the Territory was divided into eight electoral districts, among which the thirteen members of the Council and the twenty-six members of the House of Representatives were so apportioned that each district received the number of members to which it was entitled by its population. There were no "rotten boroughs" in Iowa under the first apportionment. Moreover, it is evident that an attempt was made to give the districts proportional representation in the two branches of the Legislative Assembly: that is, each district was given two Representatives to one member of the Council. Every five hundred and eighty-six people were entitled to be represented by one member in the Legislative Assembly. Inasmuch as there were eight districts, each district should have contained a population of approximately two thousand eight hundred and fifty-seven. Four of the districts were close to the standard in all respects. Of the remaining four the first district was necessarily above the average in population because

it was constituted of a single populous county. Although the sixth district fell below the average, it is probable that no better arrangement could have been devised. The divergence in population between the seventh and eighth districts, however, is inexplicable; for by adding Jackson County to the seventh district the population as well as the area included in both the seventh and eighth districts would have approached the average. The effect would have been to give the seventh district one more member of the Council and to deprive the eighth district of one of its four Representatives.³

After the first apportionment by Governor Lucas the districting of the Territory and the apportionment of the members of the legislature became, in accordance with a provision of the Organic Act, a duty of the Legislative Assembly. And so at its first session the Assembly established ten districts and reapportioned the Representatives according to the census of 1838.⁴ Although there was much variation in the size of the districts the ratio of representation was as nearly correct as possible.⁵ A separate district was made of Jackson County.

The apportionment act of 1838-1839 was repealed and a new law was enacted at the extra session of the Assembly which was called for that special purpose in July, 1840. The apportionment under the act of 1840 was for both the Council and the House of Representatives and was based upon the census of 1840. Ten districts were again designated. Indeed, aside from a change of the district numbers, the only differences from the districting of the act of 1838-1839 were the division of the district composed of Henry and Jefferson counties into two; while Jackson County was reincorporated in the same district to which it had belonged under the districting scheme originally proclaimed by Governor Lucas.⁶

The effort to keep the representation in the two branches of the legislature in the proper ratio of one to two was not so obvious in 1840 as in the previous apportionments. The third district, composed of Des Moines County, had five Representatives and only one member of the Council. Perhaps the explanation is to be found in the fact that Des Moines County had always had five Representatives. Although Des Moines County was deprived of two of its members of the Council the district was still over-represented. On the other hand, the second district, composed of Van Buren County, lacked one member of having its full share of representation: the population had almost doubled, yet the county continued to be represented by only three Representatives and two members of the Council.

The law-makers of the early forties, it appears, had little faith in representation at large: not only was the Territory divided into districts, but in several instances the members of the House of Representatives were further apportioned among counties within the Assembly district. Of the three Representatives allotted to the tenth district it was provided that Jackson County should elect one and the remaining counties the other two. Again, in the sixth district, which was allotted two Representatives, each of the two counties, Louisa and Washington, was to elect one. The same arrangement obtained in the seventh district, which was composed of Muscatine and Johnson counties. In like manner the ninth district, composed of Clinton and Scott counties, was divided by the Fourth Legislative Assembly.⁷

Furthermore, wherever a sub-district was responsible for electing a Representative the person chosen was a resident of the sub-district which elected him, although

the law required residence only in the Assembly district. It appears, therefore, that the pioneers of Iowa conformed to a strict residence requirement while adhering to the principle of district representation. In effect there were thirteen representative districts under the act of 1840 and fourteen after 1842,⁸ although only ten were described in the statute as districts.

The most astonishing feature of the apportionment act of 1840 is the fact that provision was made for fourteen members of the Council, whereas the Organic Act prescribed thirteen. It was not until nearly four years later that the mistake was rectified by an amendment which authorized the election of only one member of the Council from the seventh district.⁹ As a matter of fact, however, the seventh district had never taken advantage of the error.¹⁰

In February, 1844, a law was approved which authorized a new census and an extra session of the Legislative Assembly to reapportion the members of the two houses. But the amendments which were made in June, 1844, did not disturb the general scheme of districting and apportionment established in 1840. The settlement of the country to the west and the establishment of new counties simply necessitated the enlargement of the second, fifth, and sixth districts. No changes were made in the number of members of the Legislative Assembly to which any district was entitled; the new law merely gave candidates a wider range of residence.¹¹

The situation as to representation was decidedly bad in 1844, when on account of the increase in population in the counties of the lower Des Moines Valley, there were only three districts which had the correct number of representatives in the Legislative Assembly. Five districts

had one too many members, while two districts were under-represented. For example, the fifth district, which included Jefferson, Wapello, and Kishkekosch counties, had only two members, whereas it was entitled to five. Each district in which there was a city was fully or over-represented: the newly organized counties suffered most.

The last statute relative to electoral districts and apportionment enacted during the Territorial period was approved on January 19, 1846.¹² It took the form of an amendment to the act of 1840, and, like the similar amendment of 1844, the former plan of electoral districts was not disturbed except that Black Hawk County was transferred from the tenth to the eighth district. In the apportionment of members the third and fourth districts each lost one Representative, while the fifth and sixth districts each gained one. These changes were rendered necessary on account of the increase of population in the counties to the west. The policy of apportioning Representatives within the districts was still pursued in the act of 1846, which subdivided the second, fifth, and sixth districts so that there were really sixteen representative electoral districts.¹³

QUALIFICATIONS OF MEMBERS OF THE LEGISLATIVE ASSEMBLY

The qualifications of members of the Legislative Assembly prescribed in the Organic Act were not numerous, the most important being that the legislators should have the qualifications of voters. Every free white male citizen of the United States, above the age of twenty-one years, who was an inhabitant of the Territory of Iowa at the time of its organization was entitled to vote at the first election. For subsequent elections the First Legislative Assembly provided by law that the voter should be

a "free white male citizen, or foreigner duly naturalized according to the acts of Congress", twenty-one years of age, who had resided in the Territory for at least six months immediately previous to his application to vote. Furthermore, members of the Legislative Assembly must "reside in and be inhabitants of the district" from which they were chosen.¹⁴

One of the striking features of the Legislative Assembly was the fact that its members were comparatively young. Thus, in the First Legislative Assembly the youngest Representative was twenty-two years of age and the youngest member of the Council was twenty-five. Sixty was the age of the oldest member of this Assembly. One-half of all the members were between the ages of thirty and forty; while only twelve were under thirty. Perhaps the petty quarrels and squabbles in which the members of the First Assembly indulged bespeak inexperience; and yet the laws they enacted were anything but evidence of immaturity. The excellence of the legislative product appears still more remarkable when it is recalled that nineteen of the twenty-six Representatives were farmers. There were only four lawyers in the whole Assembly; four members were merchants; and two were newspaper men.¹⁵

The only disqualification of members of the Legislative Assembly was contained in the provision of the Organic Act that "no person holding a commission or appointment under the United States, or any of its officers, except as a militia officer", could be a member of the Council or House of Representatives. At no time during the Territorial period does it appear that there was any occasion to question the eligibility of members on the ground of the above disqualification.¹⁶

ELECTION OF MEMBERS OF THE LEGISLATIVE ASSEMBLY

The "time, place, and manner of holding and conducting all elections by the people . . . shall be prescribed by law", reads the Organic Act. But the first election of members of the Legislative Assembly was held in accordance with a proclamation of the Governor on the second Monday of September, 1838, and conducted according to the provisions of the law regulating elections in the original Territory of Wisconsin.¹⁷

A general election law for Iowa was framed by the First Legislative Assembly, which named the first Monday in August as the date of the annual election. From time to time the day prescribed in the original law was changed by legislative act. In 1840 it was necessary to postpone the general election until the first Monday in October because the extra session of the Assembly that summer lasted until August. Again, in 1843 the election was held on the first Tuesday in October. At the session of 1843-1844 the legislature hastened to reestablish the first Monday in August as the date of the regular election. But this legislation proved to be of little avail, since at the extra session of the same Assembly the election of 1844 was postponed until the first Monday in April, 1845, because Congress failed to make the necessary appropriations for defraying the expenses of the session. A law was enacted by the Seventh Legislative Assembly in 1845 to the effect that the next general election should be held in April, 1846 — although several vacancies were filled at the regular election in August, 1845. But before the time for the election in April, 1846, had arrived the last Territorial Assembly repealed the amendment of 1845, so that the final Territorial election was held in August as usual.¹⁸

Any elector could vote for members of the Council and House of Representatives at any place of holding an election in the county or district in which the elector was a resident. In case a district was divided and each part was made responsible for the election of one or more Representatives the voter was then required to vote in the sub-district of which he was a resident. If the boundaries of a district had been changed after the general election and before a special election to fill a vacancy the special election was held in the counties composing the original district.¹⁹

In the exigency of a tie vote at the election for members of the Assembly there was to be held a special election, of which the sheriff was required to give ten days' notice. But in the case of the first general election the Governor was empowered to order a new election in the event of a tie. There seems to be no evidence of any tie votes having occurred during the Territorial period.²⁰

As soon as the returns of elections were received members-elect were presented with certificates of their election, which served as credentials to a seat in the Council or House of Representatives. The credentials of the members of the First Legislative Assembly consisted of a proclamation of election issued by the Governor.²¹

VACANCIES IN THE LEGISLATIVE ASSEMBLY

Whenever a vacancy occurred in the Council or House of Representatives "by death, resignation, or otherwise", it became the duty of the Governor (who was notified of the vacancy by the county clerk) to issue a writ for a special election to be held in the district at a specified time. If there was no session of the Legislative Assembly between the time the vacancy occurred and the next general election it was not necessary to fill the vacancy.²²

Two vacancies occurred in the House of Representatives and one in the Council during the Territorial period. Cyrus S. Jacobs was elected Representative from Des Moines County in the First Legislative Assembly, but before the Assembly convened he was killed by David Rorer in an unfortunate encounter in the streets of Burlington. Thereupon George H. Beeler was elected to fill the vacancy. The second vacancy in the House of Representatives occurred during the Seventh Legislative Assembly when James Leonard of Jackson County died while the House was in session. This vacancy was not filled. In the Council it appears that Shepherd Leffler was elected to fill the seat of J. C. Hawkins in the Fourth Legislative Assembly. Other vacancies occurred after the adjournment of this Assembly and before the next general election, but inasmuch as they were not filled they are of little consequence in this connection.²³

CONTESTED ELECTIONS IN THE LEGISLATIVE ASSEMBLY

Each branch of the Territorial legislature was judge of the validity of the election of its own members. Before a case of contested election was considered it was necessary for the candidate who contested the validity of any election to give notice, within thirty-five days after the election, of his intention to the person whose election he intended to contest. Three justices of the peace were then selected who called witnesses, took testimony, and certified their findings to the president of the Council or speaker of the House of Representatives as the case required. These provisions were practically the same as those of the Wisconsin statute under which the first general election in Iowa was held.²⁴

There appear to have been only two contested elections during the Territorial period, one in the Council and one in the House of Representatives. At the first session of the Legislative Assembly a man by the name of Jabez A. Burchard presented a memorial contesting the seat of Samuel R. Murray, Representative from Clinton County. The memorial was referred to a select committee of five, which reported ten days after the opening of the session — the same day on which Mr. Murray was admitted to his seat. After hearing all the evidence on both sides of the case — the contest being over technicalities in reporting the election returns — the committee, “aware of the responsibility resting upon them, in determining a precedent for contested elections in the Territory of Iowa” and aware that “by a partial or erroneous decision upon these matters, the elective franchise may be greatly impaired, if not totally destroyed”, decided that the seat occupied by Mr. Murray should be declared vacant and Mr. Burchard admitted to the House. Although a minority report, based on assertions that the election in one precinct was conducted illegally, was presented in favor of Mr. Murray, the majority report was adopted and Mr. Burchard was admitted to the vacant seat. Mr. Murray, however, was allowed one day’s salary and mileage to and from the capital.²⁵

In the Seventh Legislative Assembly the seat of James Brierly, member of the Council from Lee County, was contested by William Patterson, who contended that votes cast for another candidate with a similar name were intended for him. Mr. Brierly was allowed to retain his seat; and a motion to pay salary and mileage to Mr. Patterson while he was contesting the election was lost.²⁶

TERM OF MEMBERS OF THE LEGISLATIVE ASSEMBLY

The term of service prescribed by the Organic Act for members of the Council was two years, while that for Representatives was one year. According to a law enacted by the Sixth Legislative Assembly (1843-1844), which specifically changed the date of expiration of the term of certain Representatives from a year after the day of their election to another time, it may be inferred that the term of members ordinarily began on the date of their election — an opinion which is corroborated by a report of a joint committee in the Seventh Legislative Assembly.²⁷

The interpretation by the joint committee, however, was on a particular case, the circumstances of which were peculiar. When the regular election of August, 1844, was postponed until April, 1845, the question arose as to whether the tenure of members of the House elected in April, 1845, should end at the regular time in August or extend until April, 1846. The Legislative Assembly decided in favor of the latter date, making the term of Representatives expire one year from the date of election. Some of the Representatives dissented from this opinion, holding that they had been elected for only one Assembly and should stand for reelection before the regular session in 1845-1846. Eight members (including the delegations from Van Buren and Des Moines counties) resigned and the vacancies were filled at the regular election in August, 1845, when three of the eight were reelected.²⁸

If the interpretation is correct that the term of members of the Legislative Assembly was one or two years from the date of their election, there was a month in 1839 and two months in 1841 when, technically, there were two sets of Representatives in office. The complication in

1839 was due to the fact that the first Territorial election was held in September, 1838, while the second regular election occurred in August, 1839. The overlapping in 1841 was on account of the postponement of the general election of 1840 until October. This same postponement also operated so as to vacate the seats in the House of Representatives for the months of August and September in 1840. Moreover, there were two months in 1843 during which there were no Representatives in office, because the election of that year was delayed until October by virtue of the law as it appeared in the *Revised Statutes of 1842-1843*. The following Legislative Assembly (that of 1843-1844) hastened to reestablish the first Monday in August as the date of the regular election and enacted the further safeguard that terms of members should thereafter expire on the first Monday in August or as soon afterward as their successors were elected and qualified. The latter provision was fortunate, inasmuch as the very next election, which should have occurred in August, 1844, was not held until April, 1845, and the members chosen then were replaced by those elected in August of the same year.

Similar conditions obtained in the Council. The term of the members first elected expired, according to the interpretation of the Legislative Assembly, on September 10, 1840, while the regular election of that year was not held until October 5th. Then, because the election in 1842 was held at the regular time in August, it may have been that there was a double quota of members of the Council in office from August to October of that year.²⁹ Since there was no session of the legislature during this period the situation passed unnoticed.

OATH OF MEMBERS OF THE LEGISLATIVE ASSEMBLY

All civil officers in the Territory, before they could act as such, were obliged to take an oath or affirmation before the Governor, the Secretary, or some duly commissioned and qualified judge or justice of the Territory. Governor Lucas administered the oath of office to the members of the First Legislative Assembly when they convened in joint assembly to listen to his first annual message. But thereafter — probably because the Governor did not deliver his messages in person — the oath was administered by a justice of the peace. Members were sworn into office just after the houses were called to order and their credentials of election had been presented; but in at least one instance the credentials were examined before the oath was administered. Councilmen took the oath only at the meeting of the first session of their term. Members who came late were installed in the same manner as those who were present at the opening of the session.³⁰

COMPENSATION OF MEMBERS OF THE LEGISLATIVE ASSEMBLY

The compensation of members of the Legislative Assembly was “three dollars each per day, during their attendance at the sessions thereof; and three dollars each for every twenty miles travel in going to and returning from, the said sessions; estimated according to the nearest usually travelled route.” While only a third as much is now allowed for traveling expenses it must be remembered that journeys over the Territorial roads by stage coach or on horse-back were accompanied by far greater inconvenience and cost. The first six regular sessions lasted the full seventy-five days, and the pay and mileage of the members of the Assembly ranged approximately between \$9600 and \$9700. The last two regular sessions

lasted thirty-seven and forty-nine days and the cost in salary and mileage was \$5481 and \$6952.50, respectively.³¹

No itemized account of the appropriation of funds for the compensation of members of the Assembly is available for the first session; but a report of a committee to estimate the expense of this Assembly indicates that they received the full amount due. Indeed, one member who did not obtain his seat until ten days after the Assembly had convened was authorized to draw pay for the full session; while another, whose seat was successfully contested, received one day's salary and mileage in full.³²

During the Territorial period there were several occasions when members of the legislature experienced difficulty in securing their pay. The Second Legislative Assembly, due to the fact that the newly appointed Secretary of the Territory, James Clarke, could not disburse funds before the Assembly adjourned, was obliged to request the receiver of public money to advance the compensation of the members on the faith of the Territory.³³ The Fourth Legislative Assembly authorized the Secretary of the Territory to effect a loan sufficient to pay the mileage of members of that session. Again, in 1845 the Fiscal Agent was authorized to negotiate a loan of \$3000 to pay in part the expenses of members of the Seventh Legislative Assembly, because the draft for payment of expenses had not arrived from Washington.³⁴

The Territory itself was obliged to pay the expenses of the two extra sessions. In both instances, however, the Assembly had during the previous session passed resolutions asking the Territorial Delegate in Congress to use his influence in obtaining appropriations to defray expenses. The sum of \$10,000 was requested for the extra session of 1840, and \$5000 for the session in 1844.

Governor Lucas withheld his signature from the first memorial; but the latter was duly approved by Governor John Chambers. Congress, however, refused to bear any part of the expense of these extra sessions, although consent was given for the holding of the second.³⁵

In addition to their regular compensation members of the Legislative Assembly were furnished with stationery, pen knives, pens, ink, ink stands, folders, sand-boxes, wafers, tape, envelope-paper, tin cups, and other articles contributing to their convenience and comfort. Indeed, the Council of the First Legislative Assembly was led into a quarrel with Secretary William B. Conway because supplies of this nature were not furnished without delay.³⁶

PRIVILEGES AND IMMUNITIES OF MEMBERS

The privilege of freedom from arrest was extended to the members of the Council and House of Representatives "in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective houses, and in going to and returning from the same"; and they enjoyed also freedom "from being questioned in any other place for any speech or debate in either house." The immunity from arrest was extended also to witnesses or persons going or returning by order of either house. In enacting this legislation the Second Legislative Assembly simply followed the example suggested by the provisions of the Federal Constitution.³⁷

Another right which might be accounted a privilege of members of the Assembly was included in the general election law: any member of the Legislative Assembly was "at liberty to resign such office, though he may not have entered upon the execution of his duties, or have taken the requisite oath of office."³⁸

Until a comparatively recent time members of the Assembly have enjoyed the privilege of franking mail and have been furnished with newspapers at public expense. This custom was established by the First Territorial Assembly. Postage on all mail to and from members of the Assembly was paid by the government, arrangements being made with the postmaster at the capital to keep accounts of all such mail and report to each house the amount charged against its members. The number of newspapers for each member varied from twenty to forty. Sometimes the particular papers were specified, and sometimes the members were allowed to make their own choice.³⁹

While members of the Legislative Assembly were accorded certain privileges and immunities they were also subject to restrictions of various sorts. Either house could expel a member by a two-thirds vote; but expulsion seems never to have been resorted to during the Territorial period. Members of either house could be compelled to attend its sessions, the sergeant-at-arms being sent for the absentees. It was the custom, however, to grant leave of absence to members who asked for it — sometimes for a week or ten days, sometimes to the end of the session, sometimes indefinitely — while those who were not present were usually excused. There is no evidence of disciplinary measures having been taken against anyone on account of absence.⁴⁰

The methods by which Territorial legislators obtained information upon which to base their enactments were various. The Organic Act appropriated \$5000 for the establishment of a library to be kept at the capital for the accommodation of Territorial officers. For this library Robert Lucas purchased the first volumes on his way to

Iowa. From time to time additions were made, representing "the combined labors, of the wise and the learned, of all ages and nations."⁴¹

Each member had at hand the laws of the Territory and sometimes the journals of the previous sessions. Likewise the reports of the Supreme Court of the Territory were furnished. In order that the Iowa legislators might profit by the experience of law-makers in other jurisdictions, the laws of other States and Territories were purchased. A resolution to establish a system of exchange of laws with the various States was adopted by the House of Representatives. For the purpose of gaining information concerning current events a subscription to *Niles' Register* was maintained. The newspapers, too, which were furnished to members contained valuable political information. Maps of the Territory were among the supplies provided for the legislators.⁴²

Other common devices for obtaining information were to request information from Territorial officers; to appoint committees to investigate the expediency of contemplated action; to have reports printed for the use of the legislators; and to have the journal printed daily.⁴³

II

SESSIONS OF THE LEGISLATIVE ASSEMBLY

IN reference to meetings of the legislature the term session is used in several senses. It usually refers to the sitting of the whole body for a period of several days, weeks, or months, when the meetings are described either as regular sessions, extra sessions, or special sessions. Daily sessions, on the other hand, are the meetings of either house during certain hours of the day when a regular routine of business is followed. There are also joint sessions and executive sessions. Joint sessions occur when the two houses sit together for a special purpose. Executive sessions are held only by the upper house — usually to approve appointments by the Governor and always in connection with business brought before the house by the executive department.

There were eight regular and two extra or special⁴⁴ sessions of the Legislative Assembly of the Territory of Iowa. The regular sessions were annual and have been designated as the First Legislative Assembly, the Second Legislative Assembly, and so on. The first extra session was held in 1840 by the Second Legislative Assembly, and the second came in 1844 during the period of the Sixth Legislative Assembly.

CONVENING OF THE LEGISLATIVE ASSEMBLY

The first session of the Territorial legislature was called by the Governor, but thereafter the Assembly convened in accordance with the provisions of statute law.

The Governor, however, was specifically empowered to call special sessions at any time that he might deem the same to be expedient and proper — a power which he never exercised. Both extra sessions were convened by special enactment of the legislature — the Governor withholding his approval in the first instance. Congress assented to the second extra session, so that Governor Chambers's approval was a matter of course.⁴⁵

The second Monday in November was the date set by Governor Lucas for the convening of the First Legislative Assembly in 1838. As authorized by the Organic Act this Assembly established the first Monday in November as the date for the commencement of each regular annual session thereafter; but this time was changed by the Third Legislative Assembly to the first Monday in December. The Seventh Legislative Assembly did not convene until the first Monday in May, owing to the postponement of the regular election of 1844 until April, 1845. The first extra session began on Monday, July 13th, and the second on the 16th or 17th of June.⁴⁶

LENGTH OF SESSIONS, ADJOURNMENT, RECESSES

Seventy-five days was the length of time set by the Organic Act for the Territorial legislature to remain in session; and the records show that the first six regular sessions ran the full number of days, including Sundays and the holiday recess.⁴⁷ The Seventh Legislative Assembly continued in session thirty-seven days; while the Eighth Legislative Assembly, because of lack of funds, came to a close after a session of forty-nine days. The first extra session lasted twenty days, and the second only three or four.⁴⁸

Adjournment *sine die* at the end of a session was

usually accomplished by a joint resolution which named the day of final adjournment. When the time arrived and each house had notified the other of its readiness to adjourn, a motion to that effect was adopted. Sometimes difficulty was experienced in agreeing upon a time of final adjournment. In one session, for example, a joint committee was appointed to ascertain when the Assembly could adjourn "without injury to the public interest." At another time the Council and House disagreed on the time of adjournment so that a committee of conference had to be appointed to settle the question. Just before final adjournment it was customary in each house for the presiding officer to deliver a short farewell address.⁴⁹

The Christmas recess during the first three sessions of the Legislative Assembly was very brief, lasting from three to five days; but the fourth, fifth, sixth, and eighth Assemblies were less energetic or more home-loving, since they were off duty from eight to eleven days. The regular compensation of the members continued during vacation.

DAILY SESSIONS OF THE LEGISLATIVE ASSEMBLY

The Council and House of Representatives usually met twice a day, once in the forenoon at ten o'clock (sometimes at seven, eight, or nine o'clock) and again in the afternoon at two o'clock. Indeed, the standing rules of the House at the last three sessions of the Legislative Assembly provided explicitly for both a morning and an afternoon session; while the House in the First Legislative Assembly, according to the rules, met each day at ten o'clock. The Council was prone to hold somewhat shorter sessions than the House, contenting itself often with one meeting a day in the forenoon. As the pressure of busi-

ness increased evening sessions, usually beginning about six or seven o'clock, became necessary. The hour for meeting was stated ordinarily in the motion to adjourn, but sometimes a resolution was adopted fixing a regular hour for coming to order at each of the daily sessions. There were times when the Council or House met only to adjourn immediately.

JOINT SESSIONS OF THE LEGISLATIVE ASSEMBLY

Joint sessions of the Council and House of Representatives, or joint conventions as they are often called, were not common during the Territorial period. While the First Legislative Assembly was in session, however, there were several occasions on which the two branches of the legislature convened in joint session for such business as hearing the Governor's message, taking the oath of office, attending prayer, and the consideration of the Governor's attitude on expenditures. The Second Legislative Assembly met in joint session to elect a director of the penitentiary: indeed, the election of officials was the chief occasion for joint sessions. Joint conventions were held in the chamber of the House of Representatives, the time of the meeting being agreed upon in a joint resolution of the two houses. On such occasions the speaker of the House of Representatives acted as the presiding officer. Two tellers, a member from each house, were appointed by the speaker. A majority of all votes cast, including blank votes, was necessary for the election of a person to an office at a joint session of the Council and House of Representatives.⁵⁰ Procedure in joint conventions was in an experimental stage during the Territorial period.

EXECUTIVE SESSIONS OF THE COUNCIL

In its capacity as adviser to the Governor and for the purpose of giving its consent to executive appointments the Council frequently met in executive sessions behind closed doors. The proceedings of such sessions were not included in the journals although the purpose for which they were held was sometimes stated. During the Sixth Legislative Assembly an executive session was held without the Council chamber being cleared.⁵¹

III

ORGANIZATION OF THE LEGISLATIVE ASSEMBLY

THE Legislative Assembly of the Territory of Iowa was organized on the bicameral principle. The Council and the House of Representatives were essentially coördinate: the qualifications for membership were identical; members of both houses were elected by the people at the same places and in the same manner; they received the same compensation; and the same privileges and immunities were enjoyed by all alike. There were, however, only half as many members of the Council as there were Representatives, but they held office twice as long. The Council enjoyed the exclusive prerogative of confirming appointments by the Governor.

Besides the general organization of the Legislative Assembly in two houses, each house was separately organized for the conduct of business. Officers were chosen and committees were appointed with specified duties for executing the work of the legislature. There was no established method of organization until the Third Legislative Assembly adopted a plan in 1840-1841. At the appointed time for the opening of a session the legislators gathered in their respective chambers and were called to order, probably by some member at the first session and thereafter by the chief recording officers of the previous session. Credentials in the form of certificates of election were then presented by the members; whereupon they were sworn into office, and took their seats. A com-

mittee was usually appointed to examine the credentials, although this procedure was neglected in the earlier sessions. During the Territorial period the credentials of two Representatives appear not to have been accepted, yet they continued to hold their seats and participate in the business of the House. Once a member without credentials was allowed to retain his seat; while at another time a Representative apparently was given a seat without showing his credentials.⁵²

TEMPORARY ORGANIZATION IN THE LEGISLATIVE ASSEMBLY

Following these preliminaries the choice of temporary officers occupied the attention of the members, although the House in the Second Legislative Assembly proved an exception in this respect by proceeding directly to permanent organization. The chief clerk of the previous session called the House to order and presided as temporary speaker. After the Second Legislative Assembly there was statutory provision for the organization of the two houses. The secretary of the Council and chief clerk of the House in office on the last day of any session of the legislature remained in office until their respective houses were organized for the succeeding session. These officers received the certificates of election of the members and prepared the roll. At noon of the day appointed for the convening of the Assembly they, if present, called the members to order and the houses proceeded to elect a temporary presiding officer. When that was done a committee of five members was elected to examine the credentials of members. After the decision of all cases of contested elections the permanent organization was begun. This law was amended by the Sixth Legislative Assembly so that the two houses were called to order by a

member for the purpose of appointing temporary presiding and recording officers. With the exception of the First Legislative Assembly, the last two sessions of the Council, and the last session of the House of Representatives, the oath of office was administered before temporary organization was begun.⁵³

Sometimes the temporary organization was simple: at other sessions there were many officers *pro tempore*. A speaker and chief clerk were the only temporary officers in the House of the First Legislative Assembly, while at two other sessions only a speaker was appointed temporarily. Once there were chosen a speaker and a sergeant-at-arms. Practically a full quota of temporary officers was appointed at some sessions. The Council was prone to have a larger number of temporary officers than the House — including even an assistant secretary and an assistant doorkeeper. The temporary organization during the Territorial period was invariably completed on the first or second day of the session.

Temporary officers were uniformly chosen by the adoption of motions to appoint certain individuals; and there was no formal installation. Only the speaker of the House and the president of the Council were members of the legislature. The term of service extended only until the permanent officers were ready to take their places. Officers *pro tempore* received compensation while they were on duty at the rate of about three dollars a day. They exercised the powers and duties of permanent officers.⁵⁴

During the session it sometimes occurred that a temporary officer was appointed for the time being to fill a vacancy caused by the absence of a permanent officer. In such an event the person appointed was not necessarily

one who had been a temporary officer at the time of the organization of the body.⁵⁵

SELECTION OF PERMANENT OFFICERS

The Territorial House of Representatives devoted the second day of the session to effecting a permanent organization. Once, however, the business of permanent organization was begun on the first day; and sometimes the officers were not installed or the Council notified of the organization of the House until the third day. The Council was less prompt in organizing than the House: a beginning was usually made on the second day, but often the election continued on the third and fourth days. There was a deadlock in the Fifth Legislative Assembly for one day in the election of a president of the Council; while in the Sixth Legislative Assembly, although the other officers were elected by the fourth day, the president of the Council was not chosen until January 11th, after the Assembly had been in session over a month. Finally Thomas Cox, a Democrat, was elected on the thirty-first ballot, defeating Francis Springer, the Whig candidate.⁵⁶

That officers were usually chosen on party lines is indicated by the fact that all but one of the speakers and five of the nine presidents were Democrats. National politics seem to have played little part in the election of presiding officers in the First Assembly, however. Both the speaker of the House and the president of the Council were Whigs, while the majority of the members were Democrats. Early in the Territorial period members of the political parties in the legislature adopted the practice of nominating officers in party caucuses. In 1841, for example, the Democrats, who were in the majority in both houses, met in the evening before the organization of the

Fourth Legislative Assembly and agreed upon the candidates whom they would support for the various offices in each house. That they were eminently successful in electing their slate is evident from the stinging condemnation by the Whigs of the "midnight caucus". Party allegiance seems to have been so strong that Jonathan W. Parker was forced to vote for himself in order that a Democrat could preside over the Council, either allowing his personal ambition to overrule his courtesy, or more probably sacrificing his own wishes to the will of his party.⁵⁷

A resolution was adopted at the session of 1842-1843 asserting it to be the duty of the House of Representatives to elect its officers equally from the great political parties of the Territory. The committee which was appointed to make the apportionment recommended that the speaker be a Democrat, the chief clerk a Whig, and the sergeant-at-arms a Democrat. The report was adopted.⁵⁸

Besides political affiliations another influence which entered into the choice of officers was that of residence. Two attempts were made in the House to apportion officers according to the representation of the electoral districts in that body. On one occasion "a great number of citizens" recommended to the House of Representatives a certain person for fireman, but the candidate was decisively defeated.⁵⁹

The first Territorial Assembly made a record in the number of its officers, there being twelve in each house. The Council employed the same number in the Second Legislative Assembly, but the House of Representatives elected only ten. As time went on the number was gradually reduced, until in the last three sessions there were only six officers: a speaker, a chief clerk, an assistant

clerk, a sergeant-at-arms, a messenger, and a fireman in the House; and in the Council a president, a secretary, an assistant secretary, a sergeant-at-arms, a messenger, and a fireman. At one session the House of Representatives boasted of only three officers: a speaker, a chief clerk, and a sergeant-at-arms. Indeed, these three were the only officers that were always chosen by the House during the Territorial period. Officers whose usefulness was outgrown were the transcribing clerk, the enrolling clerk, the engrossing clerk, the recording clerk, the assistant messenger, the doorkeeper, and the assistant doorkeeper.

Only the speaker of the House and the president of the Council were members of the Assembly. There seem to have been no particular qualifications required of other officers, although at one time a committee was appointed to investigate the citizenship and eligibility of the officers of the Council. Ten days later the committee was discharged, having heard no specific charges of ineligibility.⁶⁰

Most of the permanent officers were elected by secret ballot, although there were times when some of the minor officers were appointed. The standing rules at first provided that each house should "choose by ballot" its presiding officers and that the other officers should be "appointed by ballot". After the Second Legislative Assembly all officers were nominated. The election of each officer took place upon motion; and a majority of all votes cast was necessary to elect. It was customary to appoint different tellers for each ballot.⁶¹

When the presiding officer had been elected he was conducted to his chair, whereupon he felt called to deliver a brief speech in which he thanked the members for the

honor they had bestowed upon him and acknowledged that he was only a novice at law-making and that he knew little of parliamentary procedure. All other officers upon election appeared before the presiding officer and took an oath for the true and faithful discharge of their duties.

The presiding officers were elected for one session of the Assembly: the other officers held their places during the pleasure of their respective houses. After the First Legislative Assembly and until the seventh the secretary and chief clerk remained in office until the following session for the purpose of calling the houses to order.

POWERS, DUTIES, AND COMPENSATION OF OFFICERS

Most of the powers and duties of the officers of the Legislative Assembly were prescribed in the standing rules of the two houses, although in the later sessions only the duties of the speaker were outlined in the House rules. A statute enacted by the Fourth Legislative Assembly regulated the selection of all officers and also outlined their chief duties. From time to time the duties of certain officers were defined in resolutions, while specific duties were often assigned to a particular officer. The chief clerk was responsible for instructing other House officers in their duties.

In general the duties of the various officers were such as the title of the office would imply. The presiding officers preserved order and decorum, decided questions of order, appointed all committees unless otherwise ordered, signed all bills, administered oaths, and exercised general supervision over the other officers. Moreover, the speaker of the House voted when ayes and nays were called and in cases of tie. The chief function of the recording officers aside from their ordinary duties was to keep the

journal of the daily proceedings. The Fourth Legislative Assembly (1841-1842) enacted a law requiring them to engross and enroll bills, but no attention seems to have been paid to its provisions. The recording clerks copied the journal; the enrolling clerks transcribed, copied, and enrolled bills; the engrossing clerks engrossed bills; and the sergeants-at-arms, doorkeepers, messengers, firemen, and their assistants were concerned with the care of the chambers and the execution of the commands of the presiding officers.⁶²

Each house determined the compensation of its own officers, even though at one time salaries were fixed by law. The compensation of the presiding officers was double the regular salary of members, but the other officers were paid by the day in amounts proportionate to the importance of their duties. The early Assemblies set a precedent for very high salaries, the secretary and chief clerk receiving as much as six dollars a day. Later three dollars a day came to be the established compensation for all officers. The Third Legislative Assembly appropriated \$5325 for officers' pay, while the seventh Assembly managed to do its work with an outlay of only \$1092 for the compensation of its officers—a saving which was due mainly to a reduction in the number of officers. Special provision was made for the payment of officers whose duties extended beyond adjournment or who performed extra tasks.⁶³

COMMITTEES IN THE LEGISLATIVE ASSEMBLY

One of the most important factors in the organization of the Iowa legislature was the committee system. Committees were of various kinds; and their uses were as diverse as their types. The most common were standing

committees, select committees, joint committees, conference committees, investigating committees, visiting committees, and the committee of the whole house. Sifting committees were unknown in the Territorial period; indeed, such a committee did not make its appearance in Iowa until 1860, although the House of Representatives attempted to appoint one at the very first session in 1838-1839.⁶⁴

STANDING COMMITTEES IN THE LEGISLATIVE ASSEMBLY

The number of standing committees varied during the Territorial period from thirteen to sixteen in the House and from fourteen to eighteen in the Council, although during the whole period standing committees were appointed for some twenty different purposes. The Council had committees on judiciary, internal improvements, Territorial affairs, claims, roads, finance, enrollments, schools, military affairs, expenditures, incorporations, library, township and county boundaries, engrossments, public buildings, elections, Indian affairs, post routes and mail facilities, agriculture, and new counties. In the House there were standing committees on judiciary, common schools, internal improvements, militia, claims, enrollments, expenditures, Territorial affairs, roads and highways, elections, township and county boundaries, incorporations, vetoes, engrossed bills, public buildings, finance, agriculture, memorials, library, ways and means, and new counties. Some of these committees, namely, those on Indian affairs, post routes, and new counties, were appointed in only one session, while several others were not needed for more than two or three sessions.

A standing committee in the Council was usually composed of three members and in the House of five. The

Council of the First Legislative Assembly, however, had four committees with five members and on another occasion there was one committee with but two members; while the House of Representatives appointed standing committees on different occasions with two, four, six, and ten members.

All standing committees were appointed by the presiding officer unless otherwise directed by the house. The first named member acted as chairman. The business of standing committees consisted of considering matters brought before the Assembly for action, the various questions being referred to the committees by motion. In the House of Representatives the person making the motion to refer was privileged to confer with the committee during the consideration of the question. The chairman of a standing committee was in duty bound to notify the members of the time of sitting, but no committee was allowed to sit during the daily sessions of the houses without special leave.⁶⁵

SELECT COMMITTEES IN THE LEGISLATIVE ASSEMBLY

Select committees were appointed for special work on particular occasions — to frame bills, to settle contested elections, to determine the salaries of clerks, to carry messages to the Governor, to revise certain laws, to consider divorces, and to inquire into the expediency of proposed actions. At the first session of the Legislative Assembly special committees were appointed to frame each and every bill introduced. These bill-drafting committees were usually appointed by the presiding officer, but sometimes they were elected by ballot or acclamation. The composition of select committees varied greatly: the number of members ranged from three to ten, the mem-

bership being determined somewhat by the proposition under consideration. There were select committees composed of the members from a certain county, or one member from each district, or the members from certain counties, or the members from several electoral districts. Select committees were dissolved by the act of reporting or the accomplishment of their work. They often reported progress and asked leave to sit again.

JOINT COMMITTEES IN THE LEGISLATIVE ASSEMBLY

The joint committees were both standing and select, performing work in which both the Council and House of Representatives were interested. During the Territorial period there were joint committees to wait on the Governor, to investigate the Miners' Bank, to meet a delegation from Missouri, to apportion representation, to act on public printing, to decide the term of members, and to examine enrolled bills — all but the last named being select committees.

CONFERENCE COMMITTEES IN THE LEGISLATIVE ASSEMBLY

Conference committees to examine points of difference and reach an agreement when the two branches of the Assembly were unable to unite on a question were frequently used during the Territorial period, one being necessary before the end of the first month of the first session. Sometimes the committees on conference were unable to agree.⁶⁶

COMMITTEE OF THE WHOLE HOUSE

The committee of the whole was simply the house organized in a different form for special work: the membership was identical with that of the house itself, but the

presiding officer invariably appointed a chairman to take his place. Although the rules of the House were observed in the committee of the whole as far as applicable, there were some differences in procedure. Members, for example, could debate in the committee of the whole as often as they could get the floor. During the First Legislative Assembly every bill had to be considered in the committee of the whole before being taken up by the house; but thereafter on second reading bills were referred either to the committee of the whole, or to a select committee, or to a standing committee. After the First Legislative Assembly the House adopted standing rules governing procedure in the committee of the whole. All amendments to an original motion in the committee were incorporated and reported with the motion. The only record kept of the proceedings of the committee of the whole were its reports.⁶⁷

IV

PROCEDURE IN THE LEGISLATIVE ASSEMBLY

THE general character of the Legislative Assembly was that of a deliberative body whose actions were governed by the rules of parliamentary law. Inasmuch as the rules governing the conduct of legislative bodies consist of the usages and precedents that have developed, these established usages have been formulated for convenience in manuals which are adopted by legislative assemblies to guide their actions. Moreover, the mode of procedure in a particular legislative house is prescribed in its standing rules, drawn up and adopted at the beginning of each session. Procedure is also affected by orders, resolutions, and laws passed by the legislature from time to time.

MANUALS AND STANDING RULES

In Iowa the pioneer legislators followed in a general way the procedure in the English House of Commons, for although no manual of parliamentary law was officially adopted by the First Legislative Assembly, it is evident that *Jefferson's Manual* — the one based on procedure in the House of Commons — was the source of its rules for conducting business. The Council in the Second Legislative Assembly formally adopted *Jefferson's Manual*, and continued to base its actions upon that authority during the remainder of the Territorial period; but the House of Representatives mentioned no manual in its standing rules.⁶⁸

At the beginning of each session of the Territorial

legislature both the Council and the House of Representatives appointed committees to frame the rules that should govern their deliberations. After the first session, however, these committees simply revised the rules of the previous session. Indeed, in some of the later sessions the former rules were adopted without any alteration. It was a common practice in both branches of the Territorial legislature to adopt the rules of the previous session for temporary government. Aside from the changes proposed by the rules committee at the time of adoption, amendments to the standing rules were made during the sessions — such amendments, however, occurring mainly during the earlier years.

ORDER OF BUSINESS

The order of business, regulated by the standing rules,⁶⁹ was at first the same in both houses: the reading of the journal, petitions and memorials, resolutions, committee reports, bills, resolutions, and communications on the presiding officer's table, bills and resolutions on their second reading, bills and resolutions on their passage, reports which offered grounds for a bill, unfinished business, general file of bills, and other matters in order of their introduction. In the Fifth Legislative Assembly (1842-1843) the Council dropped the two items of bills on their second reading and bills on their passage; and this new order of business obtained until the end of the period. The House changed its order of business in the session of 1843-1844 to reading of the journal, petitions and remonstrances, resolutions and notices to bring in bills, committee reports, bills to be introduced of which notice had been given, messages and communications on the speaker's table, bills and resolutions on their second reading,

bills on their passage, reports offering grounds for a bill, and unfinished business.⁷⁰

While the annual sessions in the House of Representatives were sometimes opened by prayer, it was not the Territorial legislators who established the custom of invoking the blessing of Deity upon their deliberations. Indeed, the Council heard no prayers at all during the whole Territorial period.

INTRODUCTION AND READING OF BILLS

It was under the order of resolutions that every member of the Territorial legislature enjoyed the right of introducing bills; at the same time committees frequently introduced bills upon the request of the house. Members were required to obtain leave and give notice one day previous to the introduction of a bill, but in the case of bills introduced by committees the Council of the second and third Legislative Assemblies did not require previous notice. At the time notice was given of their introduction the First Legislative Assembly appointed special committees to prepare all bills. The member desiring to introduce the bill was as a rule made chairman of the committee. All bills introduced in the Council had to be endorsed with the name of the member or committee introducing the same.⁷¹

Every bill received three several readings previous to its passage, and the second and third readings were never on the same day without special order. The House of Representatives had a rule that bills should be dispatched in the order in which they were introduced. If there were no objections offered at the time of the first reading (which was for information) the bill went immediately to the second reading, which in the House of Representatives

of the Second Legislative Assembly consisted merely of reading the title unless a full reading was demanded. After the second reading the bill was ordered engrossed or committed to a select or standing committee, or to the committee of the whole. The First Legislative Assembly required all bills to be considered in the committee of the whole prior to coming before the house. In the House of Representatives not more than three bills could be committed to the same committee of the whole.⁷²

AMENDMENT OF BILLS

A bill could be recommitted to a committee at any time before its passage. The Council and the House of Representatives of the First Legislative Assembly had a rule that if amendments were made by "any other than a committee of the whole", the bill had to be put again on its second reading and be reconsidered in the committee of the whole. In the House of Representatives no amendment except by way of a rider could be received to any bill on its third reading. When there were disagreements between the houses on amendments provision was made for the appointment of conference committees to explain the action of the respective houses and settle the differences. If each house adhered to its position the bill was lost.⁷³

DEBATE ON BILLS

Debate in the Legislative Assembly was subject to some restrictions. No person could speak more than twice on any question without special permission; and in the House of Representatives, after the first session, every member who chose to do so could speak before any other person spoke twice. Representatives were obliged to confine their speeches to the question under debate and

avoid personalities. Smoking, walking about, and reading newspapers during debate were prohibited.⁷⁴

PASSAGE OF BILLS

Before a bill was put upon its third reading, at a time previously agreed upon, it was engrossed in a "fair round hand". The passage of a bill in the House of Representatives was certified by the clerk and the day of its passage noted at the foot. If a bill, having passed one house, was rejected by the other, notice of such action was given and the bill could not be brought in again during the same session without five days notice and leave of two-thirds of the house in which it was to be re-introduced. The joint rules of the First Legislative Assembly contained also the provisions that no bill passed by one house should be sent to the other for concurrence during the last three days of the session, and that no bill which had passed the Assembly should be presented to the Governor on the last day of the session.⁷⁵

According to the rules established by the First Legislative Assembly, a bill having passed either house was enrolled and compared with the engrossed copy by the standing committee on enrolled bills. Following the report of the committee on enrolled bills the chief recording officer appended his signature and transmitted the bill to the other house. Having passed both houses the bill was enrolled by the house in which it originated, examined by a joint committee on enrollments, and finally signed first by the speaker of the House and then by the president of the Council and presented to the Governor for approval by the joint enrollments committee. Each act was endorsed by the secretary of the house in which it originated, and a record of the endorsement as well as of the day of presentation to the Governor was entered on the journals of both houses.⁷⁶

V

THE GOVERNOR AS A FACTOR IN TERRITORIAL LEGISLATION

THE legislative power of the Territory of Iowa "shall be vested in the Governor and a Legislative Assembly", declared the Organic Act. In other words the Governor was a constituent branch of the law-making authority during the years from 1838 to 1846. The Governor did not, however, have a seat in the legislature or preside over its deliberations. Indeed, with the exception of the First Legislative Assembly, the Governor did not even appear in person before the Assembly to deliver his annual message. His influence in legislation rested chiefly upon the power given him by the Organic Act to approve bills passed by the Assembly. In 1844 Charles Mason, Chief Justice of the Supreme Court of the Territory, declared that the "approval of the Executive is absolute, unconditional", and that an "act is not 'passed' by the legislature until it is duly *approved* by the Governor who, *quoad hoc*, is a part and portion of the legislature."

It had been the policy of Congress to make the Governor the strongest and most responsible agency in Territorial government. While the power of the Legislative Assembly extended "to all rightful subjects of legislation", it appears that the chief enactments were along lines suggested by the Governor in his annual messages. Robert Lucas, for example, informed the First Legislative Assembly that its chief duty was to perfect the organization of local government, and the bulk of legislation of

that first session pertains to the constitution and administration of government. Out of a total of one hundred and forty enactments, fifty-two general and twenty-one local acts relate to the organization of offices and departments, the public domain, highways, and the militia; eighteen general laws deal with police and general welfare; one is concerned with schools; and four have to do with revenue and taxation. The three laws providing for the courts and the costs of adjudication alone fill seventy-eight pages. That the Legislative Assembly paid serious attention to the recommendations of the Governor all through the Territorial period is evident from the practice of referring his annual message to various select or standing committees for consideration, sometimes with instructions to report bills. Furthermore, there were occasions during the Territorial period when the Governor deemed it necessary to influence legislation by special messages on particular subjects.⁷⁸

Over the acts of the First Legislative Assembly the Territorial Governor enjoyed the power of absolute veto. Unless Robert Lucas approved a bill it failed to become a law. But so vigorously did Governor Lucas exercise his prerogative that, although his judgment in the majority of cases was sound Congress nevertheless was constrained to limit his veto power. In 1839 the Legislative Assembly was given the privilege of reconsidering an act disapproved by the Governor and of passing it without his signature by an affirmative vote of two-thirds of the members of each house. Furthermore, if the Governor failed to return a bill within three days, it became a law in the same manner as if he had signed it.⁷⁹

Nineteen bills met executive disapproval while Iowa was a Territory: twelve were vetoed during Lucas's ad-

ministration, four by Governor Chambers, and three by Governor Clarke. Of the nineteen bills vetoed, four became laws without the Governor's signature, one was rewritten and enacted, and another became law by being incorporated in another act.⁵⁰

National politics then occupied a more important place in local affairs than at the present time: campaigns for local offices were usually waged on national issues. It was essential that all candidates for public office be strong party men. Although the Governor was appointed by the President of the United States, he became by virtue of his high office the leader of his party in the Territory. As the head of a political party in the Territory the Governor was in a position to guide the Legislative Assembly in needed legislation, the extent to which his influence was felt depending upon his personality. In the case of Robert Lucas, his temperament was of such a positive character and so steadfastly did he abide by his opinions — opinions that had been formulated after years of experience in frontier government — that he fairly dominated legislative policies. The fact that Governor Chambers was a Whig while the majority of the members of the Assembly were of the Democratic faith probably accounts for three of the four bills which he vetoed being enacted into law without his signature. The influence which the Governor exerted through his political party affiliations is difficult of measurement, but there can be no doubt as to its efficacy.

VI

CHARACTER, PUBLICATION, AND DISTRIBUTION OF TERRITORIAL STATUTES

THE assertion has sometimes been made that the enactments of the early Assemblies were superior in some respects to any laws that have since been placed upon the statute books of this Commonwealth. This alleged superiority may have been due to the simplicity of pioneer conditions, the greater wisdom of the law-makers, the consideration of fewer measures in a session, the employment of parliamentary procedure which was conducive to thorough debate, or the framing of acts by persons specially qualified for the work. At all events the Territorial statutes possess certain marked characteristics.

CHARACTER OF TERRITORIAL STATUTES

Between 1838 and 1846 there were nearly a thousand enactments by the Legislative Assembly, the great majority of which — more than seventy-five percent — related to the establishment, functions, administration, and maintenance of the government, either in its Territorial or local phases. Most of the remaining laws affected business interests; while only a very small percentage had to do with private law and the definition of crime. Such matters as roads, dams and ferries, marriage and divorce, incorporation of business enterprises and institutions, the organization of courts, and the regulation of judicial procedure received primary attention. Laws in regard to charity and correction, the regulation of

trades and professions, concern for public health, financial affairs, and schools are rendered conspicuous by their scarcity. Another interesting feature of Territorial legislation is that the number of acts of a special nature was almost double the number of general laws.⁸¹

PUBLICATION OF TERRITORIAL STATUTES

It was the duty of the Secretary of the Territory to "record and preserve all the laws and proceedings of the Legislative Assembly". He was responsible for the supervision of the printing and distribution of the statutes. Before the first Monday in December of each year he was obliged to transmit one copy of the laws to the President of the United States and two copies to the speaker of the Federal House of Representatives. Incidental expenses of the Territorial legislature, including the printing of the laws, were paid from sums of money appropriated annually by the Federal government upon the estimate of the Secretary of the Treasury.⁸²

The Legislative Assembly at each session authorized the printing of the laws and resolutions which had been enacted, the number of copies varying from a thousand to twenty-five hundred. The laws of the First Legislative Assembly were issued in a classified form known as *The Old Blue Book* — so-called from the color of the cover. Only fifteen hundred copies of the session laws of the second, third, and fourth Legislative Assemblies, including the extra session of 1840, were printed. The general laws of the Fifth Legislative Assembly were printed in the *Revised Statutes of 1842-1843*, known as *The Blue Book* — the second attempt to codify the laws of the Territory. There were issued twenty-five hundred copies of *The Blue Book*, while only one thousand copies of the

local and private laws of the Fifth Legislative Assembly were printed. Twenty-five hundred copies of the laws of the sixth, seventh, and eighth Legislative Assemblies were published.⁸³

Ninety days after adjournment was the usual time allowed for the printing of the laws, although the Seventh Legislative Assembly allowed not more than half that time, and the laws of the extra session of 1840 were demanded within sixty days.⁸⁴

All laws of a general nature enacted by the Second Legislative Assembly were printed in four newspapers of the Territory, while a list of the statutes was published in all of the Territorial newspapers. Sometimes extra copies of a particular act were printed in pamphlet form; and again, if a mistake was made in printing a law the statute was corrected and republished.⁸⁵

The style of printing the laws was regulated in detail by an act of 1842-1843 in which the *Statutes of Arkansas* were cited as a model. The same law determined the compensation for printing. At other times, however, the pay was fixed in the resolution appointing the printer, either at a definite amount or at the rate allowed for similar work by Congress.⁸⁶

DISTRIBUTION OF TERRITORIAL STATUTES

The distribution of the published laws was regulated by the First Legislative Assembly. A sufficient number of copies for the use of civil officers — some fifteen officers being designated — were sent to the clerks of the several boards of county commissioners for distribution. Furthermore, from twenty to one hundred additional copies were sent to each county; the United States and Territorial officers were entitled to copies; and the remainder

were reserved for future disposal by the Secretary.⁸⁷ The laws of the second, third, and fourth Legislative Assemblies were distributed in the same manner as those of the first Assembly.⁸⁸ The Third Legislative Assembly added assessors, road supervisors, constables, and district attorneys to the list of officers entitled to a copy of the statute laws of the Territory.⁸⁹

The *Revised Statutes of 1842-1843* and the local and private acts of the Fifth Legislative Assembly were widely distributed among local officers, while the number of copies allotted to the counties varied from fifteen to one hundred and fifty. Later, four new counties each received fifty copies of the *Revised Statutes*. The number of session laws distributed to the counties was changed by each of the last three sessions of the Assembly. A special agent was appointed to deliver the session laws of 1845.⁹⁰

From time to time the legislature ordered the sale of surplus copies of the laws, the proceeds being used to purchase books for the Territorial library or to replenish the county and Territorial treasuries. The prices per copy ranged from twenty-five cents to a dollar and a half.⁹¹

Upon two occasions the Secretary was authorized to send copies of the laws of the Territory to the executives of the different States and Territories in exchange for the statutes enacted in those States and Territories. Once the journals of the Legislative Assembly were distributed in the same way.⁹²

VII

COMPOSITION OF THE GENERAL ASSEMBLY

WHEN Iowa became a State in 1846 the Constitution vested the authority to enact statute law in a General Assembly which, like the Legislative Assembly of the Territorial period, was composed of two houses, a Senate and a House of Representatives. A new Constitution was adopted in 1857, but the fundamental organization of the legislature remained unaltered. During seventy years of statehood the General Assembly has convened in regular session thirty-six times, the sessions being held in alternate years with the exception of the thirty-first and thirty-second General Assemblies in 1906 and 1907. Upon six occasions there have been extra sessions; and once an adjourned session was held.

The seat of the legislature during the period of the first six General Assemblies was Iowa City, and all legislative sessions were held in the Old Stone Capitol. In 1857 the capital was transferred to Des Moines, and there until 1884 the legislators met and did their work in the Old Brick Capitol. The present State House, which has been occupied by the last sixteen General Assemblies, will probably remain the home of the legislature for years to come. Only in case of pestilence or public danger, is the Governor empowered to convene the General Assembly elsewhere.

ASSEMBLY DISTRICTING AND APPORTIONMENT OF MEMBERS

Representation in the General Assembly has always been based upon population; but prior to 1868 only white

inhabitants were counted. The Constitution of 1846 provided for a census every two years during a period of eight years, on the returns of which the General Assembly apportioned its members — the Representatives at every regular session of the Assembly and the Senators at every other regular session. The number of members of the Assembly was fixed by statute; but there could never be less than twenty-six or more than thirty-nine Representatives until the population of the State exceeded 175,000, and after that event never less than thirty-nine or more than seventy-two. At the same time the number of Senators was not to be less than one-third nor more than one-half the number of Representatives.⁹³

The State was districted by the Constitution of 1846 so that there were, in the First General Assembly, thirty-nine Representatives and nineteen Senators elected from fifteen Assembly districts. This constitutional apportionment was based upon the Territorial census of 1846.⁹⁴

The first State census was taken in 1847; and thus it was the Second General Assembly that passed the first apportionment act under the Constitution of 1846, more than two years after Iowa had become a State. Inasmuch as the population had not then reached the 175,000 mark, the number of members could not be increased. At the same time the new apportionment act effected a number of changes among and within the fifteen districts.⁹⁵

Between the enumerations of 1847 and 1850 the population of Iowa increased over 75,000, and in the following year the remaining portion of the State was organized into counties. Instead of observing strictly the provisions of the Constitution it appears that the Third General Assembly (1850-1851) not only re-apportioned the Representatives but also the Senators, thereby causing

trouble in the election of 1852. The nineteen districts that were created covered the whole area of the State for the first time. Although there were enough inhabitants to legally justify increasing the size of the Assembly, the membership was kept below the maximum allowed by the Constitution — only sixty-three Representatives and thirty Senators being provided for the Fourth General Assembly.⁹⁶

The Fourth General Assembly, following the provisions of the Constitution and for the first time apportioning only the Representatives, divided the State into forty-two districts, among which were apportioned seventy members of the lower house. The number of Senators and the senatorial districts remained as established by the legislation of the Third General Assembly. This was the first time during the State period that the districts were numbered. In some cases the new districts overlapped: Jackson and Jones counties constituted the sixth and seventh districts, respectively, and both together constituted the eighth district.⁹⁷

The first really comprehensive apportionment and districting act was that of the Fifth General Assembly (1854–1855). It was based upon the census of 1854 which accorded to Iowa a population of 326,500. Thirty-four senatorial and forty-eight representative districts were created and the full quota of seventy-two Representatives and thirty-six Senators provided. The senatorial and representative districts were numbered separately. Thirty-two of the senatorial districts were allotted one Senator each, while the remaining two were given each two Senators. As in the previous districting some districts, both senatorial and representative, overlapped.⁹⁸

The eight year period within which the years for re-

apportionment were specifically designated by the Constitution ended in 1855. Nevertheless, the following General Assembly, the last to be held under the Constitution of 1846, proceeded to re-apportion the Representatives as during the eight year period. Fifty-five districts were established from which were elected the seventy-two members of the lower house.⁹⁹

Before the Seventh General Assembly convened the Constitution of 1857 had gone into effect, without immediately disturbing, however, the districting and apportionment for the Assembly. But in view of the growing population the framers of the new Constitution saw fit to increase the maximum number of members and to prescribe new regulations for districting. As in the Constitution of 1846 gerrymandering was made difficult by a clause forbidding that any county be divided or that counties composing any district be separated from each other by any county belonging to another district. Furthermore, no representative district could be made up of more than four organized counties. The Constitution of 1857 ordered the census to be taken in 1859, 1863, 1865, 1867, 1869, 1875, and every ten years thereafter. Senators were to be apportioned after each State and Federal census, while for Representatives the State could be districted and an apportionment made at every regular session. The ratios of representation in both houses were to be fixed by statute law which must comply with the constitutional provision that "each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law, one-half of that number, or more, shall be

entitled to one additional representative." Floating districts were prohibited. Furthermore, there could be no more than one hundred Representatives and no more than fifty Senators, the number of Senators never amounting to less than one-third nor more than one-half of the representative body.¹⁰⁰

The Seventh General Assembly — the first to convene under the new Constitution — enacted two laws of apportionment, one for Senators and the other for Representatives. Forty-one senatorial and sixty-one representative districts were established, and the number of Representatives was fixed at eighty-six and that of Senators at forty-three. The ratio of apportionment was one Senator to every 17,200 inhabitants and one Representative to every 7000.¹⁰¹

The number of senatorial districts was increased until there were fifty in 1872. Since then there has been no change in the number of senatorial districts; but the number of representative districts did not become ninety-nine — one for every county — until 1906. There were forty-six Senators in 1862 and 1864; forty-eight in 1866; forty-nine in 1868; and since 1870 there have been exactly fifty. There were ninety-four Representatives in 1862; ninety in 1864; ninety-eight in 1866; ninety-nine in 1868; and from 1870 to 1904, one hundred. In 1904 the Constitution was so amended as to fix the number of Representatives at one hundred and eight. Every county now has a Representative; and the nine counties having the largest population (if it amounts to three-fifths of the ratio number in excess of the ratio) are each entitled to an additional Representative.

Obviously the ratio number, which is obtained by dividing the whole population by the number of counties,

has been fluctuating. For Senators it was 17,200 in 1858; 17,000 in 1860; 17,200 in 1862 and 1864; 18,000 in 1866; 22,500 in 1868; 25,000 in 1870; 30,000 in 1872; 40,000 in 1876; 46,000 in 1882; and since 1882 there has been no change. The ratio for Representatives was fixed at 7000 in 1858; 7500 in 1860; 8500 in 1862; 8450 in 1864; 8500 in 1866; 9850 in 1868; 11,170 in 1870; 12,500 in 1872 and 1874; 14,100 in 1876 and 1878; 16,850 in 1882; 24,000 in 1886; 18,500 in 1890; 22,000 in 1892; 36,000 in 1902; 27,900 in 1904; 22,320 in 1907; and 22,470 in 1911.¹⁰²

QUALIFICATIONS OF MEMBERS OF THE GENERAL ASSEMBLY

Both of the State Constitutions exclude from the office of State Representative any person who has not attained the age of twenty-one years, who is not a free white male citizen of the United States, and who has not been an inhabitant of Iowa for one year preceding his election. The Constitution of 1846 required thirty days residence in the county or district from which the Representative was chosen; whereas by the Constitution of 1857 the residence requirement was increased to sixty days. Senators must be twenty-five years of age; otherwise their qualifications are the same as those of Representatives.¹⁰³

From such data as is available it is evident that during the State period the average age of the members of the legislature has been greater than it was during the Territorial period. There have been members of both the House of Representatives and the Senate who in point of age barely met the constitutional requirements. No old age limitation has ever been placed upon members of the General Assembly: indeed, a considerable number of persons over seventy years of age have served in both houses — a circumstance which has occurred more fre-

quently since 1900. Two of the oldest members to serve in the legislature were Samuel A. Moore, a Representative in the Twenty-ninth General Assembly, and Daniel F. Miller, a Representative in the Twenty-fifth General Assembly, both of whom were eighty years of age.¹⁰⁴

Until 1909 there were more members born in other States than in the State of Iowa; but since that date native born Iowans have been in the majority. To William Hale of Glenwood, a Representative in the Tenth General Assembly (1864), probably belongs the distinction of being the first native born member of the legislature. Since then the number of native sons has steadily increased until in 1915 ninety-two of the one hundred and fifty-eight members were listed as born in Iowa. Senators or Representatives of foreign birth have never been numerous.

In respect to occupation farmers seem to have been the most numerous, while lawyers are next in numerical strength. Moreover, it is worthy of note that most of the agricultural members have been in the House of Representatives, while the lawyers have been ordinarily more numerous in the Senate. Although in earlier years merchants were more numerous than bankers, these two occupations are now about equally represented. The professions, real estate interests, and the newspapers have had a fairly consistent representation, although they have been greatly in the minority. Occasionally manufacturers, preachers, teachers, skilled mechanics, insurance agents, and laborers have made their appearance in the halls of the legislature. There is no record of any avowed politician ever having occupied a seat in either house.

The educational training of members of the General

Assembly has become more pronounced. In the last four Assemblies there have been seventy-five or more college men; while in the two Assemblies immediately preceding there were fifty-seven and sixty-three, respectively. The increase of members with college training is chiefly noticeable in the House of Representatives. In the last six Assemblies there have been from twenty-three to thirty-nine Representatives with not more than a common school education; usually between thirty and fifty members of the Assembly have enjoyed the benefits of a high school or academy; and a few have had business college training.

Only sixty-five members of the Thirty-sixth General Assembly had had legislative experience, although eighty claimed previous political activity. The greatest number of experienced law-makers in the Iowa legislature seems to have been present in 1906, when it appears that one hundred and forty-four out of the one hundred and fifty-eight members had served in previous sessions — a situation which may be explained by the fact that many of the members held over for a session owing to a change in the time of election. Since 1898, with the exception of the session of 1915, between seventy and ninety men of some legislative experience have held seats in each General Assembly.

Senators and Representatives, while serving in that capacity, have always been disqualified for appointment to any civil office of profit under the State which has been created or the emoluments of which have been increased during their term — excepting, however, offices that are filled by popular election. Such an appointment would simply be void, while the rights and privileges of the appointee as a member of the legislature would remain unimpaired. Persons holding any lucrative office under the

United States, the State of Iowa, or any other power, or any collectors or holders of public money until they have accounted for and paid into the treasury all sums for which they may be liable, are disqualified from becoming members of the General Assembly. According to the Constitution of 1846 "offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative." To this list of non-lucrative positions the Constitution of 1857 added the office of notary public.¹⁰⁵

Three cases of alleged disqualification which arose in the extra session of the First General Assembly furnish interpretations of the constitutional provisions on that score. Senator James Davis had removed from the district from which he had been elected, had accepted a lucrative position, and had resigned from the Senate — at least conditionally. The investigating committee thought that removal from his district after election did not disqualify a member from holding a seat in the legislature. Furthermore, they were of the opinion that although the office which Mr. Davis had accepted was a lucrative one he had not held it at the time of his election and was therefore not disqualified, since the clause in the Constitution applied only to eligibility at the time of election and did not act to disqualify a member afterward. Moreover, the office was not one for which Senators, by virtue of being such, were disqualified. Finally, since his resignation had not been accepted it had never taken effect, and Mr. Davis was allowed to keep his seat.¹⁰⁶

Likewise Senator Thomas Baker and Senator John M. Whitaker, members of the First General Assembly, were charged with having accepted lucrative offices. And

again it was decided that the Constitution was concerned only with eligibility at the time of election and not with the subsequent disqualifications of members. It was held that ineligibility does not become a disqualification after election to the Assembly. Seven members, however, protested that Mr. Baker was disqualified by the clause in the Constitution which divides the government of Iowa into three separate departments — the legislative, the executive, and the judicial — and prescribes that no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others. Since the office to which Mr. Baker had been elected was that of prosecuting attorney, and therefore judicial in character, he should be deprived of his seat in the legislative branch of the government. It transpired that Mr. Whitaker's position was not lucrative; and so both of these persons were allowed to retain their seats in the General Assembly.¹⁰⁷

In 1862 two Senators were serving as officers in the Union army. Without any proclamation of vacancy, executive writ, or notice of election, the districts which they represented elected two successors who, when they presented themselves to the Ninth General Assembly, had difficulty in obtaining seats. The Senate finally decided that the offices of colonel and lieutenant-colonel were lucrative, and that the acceptance of such commissions by the Senators had disqualified them for further service in the legislature.¹⁰⁸

Again, it appears that Mr. J. H. Murphy, Senator from Scott County in 1874, was at the same time mayor of Davenport. His eligibility having been questioned, the Senate without much ado decided that his salary of one hundred dollars was not lucrative and that he was therefore entitled to hold his seat in the General Assembly.¹⁰⁹

It was thought by some persons in 1884 that being a trustee of a State institution in the service of which he received a compensation of four dollars a day was sufficient to disqualify a Representative from holding a seat in the House. After some discussion the question was indefinitely postponed.¹¹⁰

ELECTION OF MEMBERS OF THE GENERAL ASSEMBLY

Senators and Representatives have always been elected by the qualified electors of their respective districts. The Constitution of 1846 fixed the first Monday in August as the date of the general election — the same date that had obtained during the Territorial period. The first general election, however, was held on October 26, 1846, in accordance with an executive proclamation. In 1857 the new Constitution changed the day of the general election to the second Tuesday of October, except in the years of the presidential election when it should occur on the Tuesday next after the first Monday in November. The first election of legislators was held in October, 1857. In 1884 the Constitution was amended to the effect that the general election should always occur on the Tuesday next after the first Monday in November, while in 1904 another amendment changed the general biennial elections from odd to even numbered years. Finally, an amendment requiring the General Assembly to determine the time for holding the general election was approved by the people on November 7, 1916. The places and manner of holding elections have been determined by statutory enactments, except that by constitutional provision all elections by the people shall be by ballot.¹¹¹

VACANCIES IN THE GENERAL ASSEMBLY

“When vacancies occur in either house, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.” In addition to this constitutional provision statute laws have been enacted to further govern the process of filling vacancies in the General Assembly. The *Code of 1851* not only described the events causing vacancies, but provided that the Governor might issue a warrant for filling a vacancy either by special election or at an April election if a session of the Assembly would be held before the time of the regular election. So far as can be ascertained the Governors never issued any proclamations for special elections during the period of the first State Constitution.

An enactment in 1858 made it the duty of the Governor to issue a proclamation designating all the officers to be chosen at regular as well as special elections and naming the date of such elections. Vacancies occurring thirty days prior to the general election were to be filled at the general election. Indeed, most of the vacancies in the General Assembly have been filled at general elections; but in case there should be a session before the general election the Governor must order a special election at the earliest practicable time, ten days' notice being given. Persons elected to fill vacancies hold office only for the remainder of the unexpired term. As a rule the vacancies in the General Assembly have been caused by resignation, death, or removal from the electoral district. In the event of vacancies occurring just at the beginning or during a session of the General Assembly the seat has usually not been filled.¹¹²

SEATING OF MEMBERS IN THE GENERAL ASSEMBLY

Each house is judge of the qualification, election, and return of its own members. When the Senators and Representatives have been called to order at the opening of a session the newly elected members present their certificates of election to the secretary or chief clerk. A special committee examines the credentials and recommends that those whose election papers are satisfactory be given seats. New members are assigned to seats by lot; but hold-over members and those who have been reëlected are allowed to retain the places they formerly occupied. In the House it is customary to permit members with defective sight or hearing to select seats near the front, while minority members may select seats in a particular section of the chamber if they desire.¹¹³

CONTESTED ELECTIONS IN THE GENERAL ASSEMBLY

Contested elections are determined in the manner directed by statute. The contestant serves the candidate who has been declared elected with a statement of intention to contest his election. A copy of this statement and other papers are sent to the Secretary of State, who turns them over to the presiding officer of the house in which the contest is to be tried.¹¹⁴

Contested elections in both the Senate and House of Representatives have been by no means an uncommon occurrence. Indeed, not more than sixteen General Assemblies have escaped an election contest, the frequency of such contests increasing as the membership in the Assembly has enlarged. Since 1896 the Thirtieth General Assembly is the only one in which there has not been a contested election: in some sessions there have been several contests. Procedure in contested elections has not

been uniform: the case has usually been referred to a committee — sometimes to the standing committee on elections or judiciary, and sometimes to a special committee. Contestants have usually been accorded certain privileges, such as a seat within the bar of the house and permission to address the house in their own defense. The regular compensation of members has been paid to those contesting for seats.

TERM OF MEMBERS OF THE GENERAL ASSEMBLY

In accordance with constitutional provision Representatives have been elected for a term of two years and Senators for four years. The Senators have been divided into two classes, so that one-half of that body is elected every two years. The Constitution of 1846 provided that the term of office should continue two years from the day of the general election — as had been the situation in the Territory. But the present Constitution fixes the commencement of the term of office on the first day of January following election — the incumbents continuing in office until their successors are elected and qualified.

When the Constitution of 1857 was adopted a readjustment of the terms of the members of the Assembly was necessary because of a change in the date of the general election. Thus the term of all the members was shortened a year: the Senators elected in 1854 served until October, 1857; those elected in 1856 served until October, 1859; and the Representatives elected in 1856 held office until the general election of 1857. Again, when the year of elections was changed from 1905 to 1906 the terms of those members of the General Assembly which would otherwise have expired in 1905 and 1907 were extended one year.¹¹⁵

OATH OF MEMBERS OF THE GENERAL ASSEMBLY

Before entering upon the duties of their office members of the General Assembly must take and subscribe to the following oath: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." Members of the General Assembly have authority to administer this oath to each other.¹¹⁶

COMPENSATION OF MEMBERS OF THE GENERAL ASSEMBLY

The members of the First General Assembly, by virtue of a clause in the Constitution, received two dollars a day for their services during the entire period of the regular session. At the extra session of this Assembly the compensation of members, including the pay for the extra session itself, was fixed by law at the maximum amount allowed by the Constitution — two dollars a day for the first fifty days and one dollar a day for the remainder of the session. Traveling expenses, the rate of which was established by the Constitution, were covered by the sum of two dollars for every twenty miles in going to and returning from the capital. The compensation of members of the General Assembly has always been paid out of the State treasury.¹¹⁷

Under the Constitution of 1857 the compensation of members of the General Assembly has been regulated by law — except that of the members of the Seventh General Assembly, for whom the Constitution provided an allowance of three dollars a day. The first Assembly after the adoption of the present Constitution fixed the compensation at three dollars a day, but in 1868 this sum was in-

creased to five dollars a day. The rate of pay was the same for extra sessions. Then in 1872 the basis of compensation was changed so that members received \$550 for a regular session and for extra sessions the same rate as for the preceding regular session. After 1880 the pay for extra sessions did not exceed six dollars a day. The Thirty-fourth General Assembly raised the compensation to \$1000 a session; and in 1913 the maximum rate for extra sessions was made ten dollars a day. While members still receive \$1000 for a full session there is a scale of compensation for those whose term does not cover a full session; but if their period of service extends over fifty days they are entitled to \$1000. The Constitution does not permit an Assembly to increase the compensation of its own members.¹¹⁸

The expense of traveling having decreased since 1857, the amount allowed to members for that purpose has been lowered accordingly. Three dollars for every twenty miles traveled in going to and coming from the capital by the nearest traveled route was named by the Constitution as the maximum allowance for traveling expenses; and such was the amount allowed by statute until 1880 when it was reduced to five cents a mile. Members receive their mileage during the first month of the session; while half of their salary is paid at the end of thirty days and the remaining half at the end of the session.¹¹⁹

In addition to their regular compensation and mileage the members of the legislature have been furnished with stationery and postage. In the earlier sessions arrangements were made with the local postmaster for the payment of postage in a lump sum from the State treasury, the chief recording officer of each house making the necessary arrangements with the postmaster. In 1868 a law

was passed limiting the amount of postage to three dollars a week and of stationery to two dollars a week per member — the stamps and stationery being supplied from the office of the Secretary of State. The franking privilege was sometimes confined to specified classes of mail. In recent years, however, no allowance has been made to members for postage. Such stationery as is needed may be obtained by the members — the cost of which to the State has varied from one dollar and a half to fourteen dollars per member.¹²⁰

PRIVILEGES AND IMMUNITIES OF MEMBERS

Senators and Representatives in all cases except treason, felony, and breach of the peace are privileged from arrest in going to and returning from sessions of the General Assembly. Neither can members of the General Assembly be arrested or held to appear in or answer to any civil or special action in court while the Assembly is in session. Every member is free to dissent from or protest against any act or resolution of the Assembly which he thinks may injure the public or any individual; and he may have his reasons for objecting entered upon the journal. Outside of the legislature no member may be questioned for any speech or debate in either house. It may also be accounted a privilege that at the request of any two members the yeas and nays shall be printed in the journal. Each house is empowered to punish its members for disorderly behavior; and with the consent of two-thirds it may expel a member, but not a second time for the same offense.¹²¹

VIII

SESSIONS OF THE GENERAL ASSEMBLY

SINCE Iowa became a State in 1846 — a period of seventy years — the General Assembly has convened in regular session thirty-six times. With the exception of the meetings in 1906 and 1907 regular sessions have been held in alternate years. Iowans are satisfied, apparently, that biennial sessions of the legislature are of sufficient frequency for the expression of public opinion, for during the State period there has been occasion for only one adjourned session and six extra sessions.¹²² The adjourned session of 1873 and the extra session of 1897 were both held for the purpose of codifying the law of the State. The extra sessions of 1848 and 1908 had to do with the election of United States Senators; the two called during the Civil War (1861 and 1862) were concerned chiefly with military affairs; and the session of 1856 was convened to consider certain land grants to railroads.

CONVENING OF THE GENERAL ASSEMBLY

The time of convening the General Assembly in regular session was established by constitutional provision. The first State Constitution fixed "the first Monday of December next ensuing the election of its members" as the date of commencement, but the Constitution of 1857 changed the day to the second Monday in January. November 30, 1846, was the day upon which by the Governor's proclamation, the First General Assembly convened. The election of members of the General Assembly

under the Constitution of 1846 occurred in even numbered years, beginning in 1846; but the second Constitution went into effect in September, 1857, so that until 1906 the general elections were held in odd numbered years and the Assembly met in even numbered years. In 1904, however, the Constitution was so amended as to change the general elections from odd to even numbered years, causing the legislature to meet in odd numbered years.¹²³

The extra sessions of the General Assembly were convened each time by executive proclamation. Two of these sessions began in January, one in May, another in July, another in August, and the last in September. The adjourned session was held in the winter of 1873 by order of the Fourteenth General Assembly.¹²⁴

LENGTH OF SESSIONS, ADJOURNMENT, RECESSES

In the State of Iowa there has been no limitation on the length of time during which the legislature may remain in regular session, with the result that there has been considerable variation in the length of such sessions. The shortest regular session was one of forty-three days, held by the Second General Assembly; while the longest was in 1872, lasting one hundred and seven days. The average length of the regular sessions has been eighty-one days. In 1913 and again in 1915 the General Assembly adjourned on the ninety-seventh day.¹²⁵

The Constitutions of Iowa have never permitted the adjournment of either house for more than three days without the consent of the other, although each house sits upon its own adjournment. During the period of the first Constitution the legislative sessions began in December, so that some time was lost by Christmas recesses. The First General Assembly adjourned from December 19th

to January 4th, and the fifth and sixth Assemblies took vacations of eleven and fourteen days respectively. The second, third, and fourth Assemblies, however, adjourned for only a few days. It appears that the per diem allowance of the members continued as usual during these recesses. Later Assemblies have had the habit of voting themselves brief vacations — usually about the first of March.¹²⁶

Extra sessions have adjourned *sine die* whenever the work for which they had convened was completed. The first of such sessions lasted twenty-three days; the second, fourteen days; the one in 1861, fifteen days; that of 1862, nine days; the extra session to adopt the *Code of 1897*, one hundred and fifteen days; and the extra session of 1908, twelve days. Both of the extra sessions of 1897 and 1908 subsequently held adjourned sessions — the first to accept the report of the committee to supervise the printing of the Code, and the other to elect Governor Albert B. Cummins to the office of United States Senator. The joint resolution providing for the adjourned session of 1873 limited the meeting to thirty days; but the meeting actually lasted thirty-seven days — from January 15th to February 20th.¹²⁷

Adjournment *sine die* has occurred whenever the business of the session has been accomplished. A committee in the House of Representatives reported that the First General Assembly could not adjourn before March 5th without detriment to the public interest, when as a matter of fact the work was completed by February 25th. The Senate of the Second General Assembly tried to adjourn before Christmas and again on December 30th, but final adjournment did not occur until January 15th. The two houses have never disagreed with respect to the time of

adjournment, but if they had the Governor could have adjourned the Assembly to any time he thought proper — provided it was not beyond the time fixed for the meeting of the next General Assembly.¹²⁸

There have been some interesting circumstances connected with the method of adjournment. The custom has been for each house to inform the Governor and the other house of its readiness to adjourn; whereupon either the presiding officer has adjourned the house *sine die* or a motion to that effect has been passed. Two sessions were terminated in the House of Representatives by poetical motions to adjourn. Sometimes divine blessing has been invoked upon the dissolving Senate. Resolutions fixing the date of final adjournment have frequently been adopted early in the session, but rarely have they been observed when the time came. A joint committee has been appointed occasionally to fix the time of adjournment. By at least one Senate adjournment was considered a calamity, if the sentiment that was expressed — *sic transit gloria mundi* — can be construed literally.

DAILY SESSIONS OF THE GENERAL ASSEMBLY

The Senate and House of Representatives of the Thirty-sixth General Assembly followed the plan of meeting twice each day, the morning session beginning at nine o'clock and the afternoon session at two.¹²⁹ In fact, it has been the policy of the House of Representatives from the time of the First General Assembly to fix in the standing rules the hour to which it shall stand adjourned from day to day. In the earlier years, however, the morning session usually began at ten o'clock. The Senate did not adopt the idea of including in the standing rules the hours for beginning daily sessions until 1909.¹³⁰

The hour of meeting may be changed at any time by the order of the house; and the records show that there have been a great many exceptions to the general rule — almost as many in the House as in the Senate. Even the Representatives, whose hours of meeting have been fixed in the rules, have determined the length of their daily sessions largely by the needs of the moment. In truth the hour for meeting has often been named in the motion for adjournment. Furthermore, resolutions fixing an hour of meeting other than the one specified in the rules have been adopted until otherwise ordered. At some sessions the hour of daily adjournment has also been fixed for a period by resolution, although it has even then been necessary frequently to extend for a few minutes the regular hour of adjournment. Seldom has any General Assembly been able to finish its work without resorting to evening sessions now and then; but such sessions have usually been held for some special purpose. Sometimes evening sessions have not terminated until the break of day. To provide time for committee work it has been customary to hold only one session a day for a time, the afternoon session being the one usually dispensed with.

JOINT SESSIONS OF THE GENERAL ASSEMBLY

Joint sessions of both houses, or joint conventions, have been common during the State period. The chief purposes have been to canvass the votes for Governor, to inaugurate the Governor and Lieutenant Governor, and to elect various officials. Moreover, there have been many special occasions which have justified joint meetings. During the Civil War a joint session was held to hear the reading of Washington's Farewell Address, and another for the presentation of an Iowa flag to the House of Rep-

representatives. Again, there was once a joint convention for the presentation of a portrait of James W. Grimes; one was held to choose a site for an insane hospital; another was for the consideration of the beet sugar industry; and still another was called to celebrate McKinley's birthday. In 1904 there was a social joint session for the purpose of enabling the members to look at pictures of the Louisiana Purchase Exposition. Addresses by noted persons have often been delivered before the joint convention of the Iowa legislature.

It has been customary for the House to invite the Senate to a joint session. The Senate on the other hand has been known to request an invitation to a joint session, as well as to ignore one sent by the House. Invitations from the House have often been in the form of concurrent resolutions amendable by the Senate. Once the House, having asked the Senate to a joint convention, rescinded the resolution before the appointed time of meeting.¹³¹

Joint sessions have been held at any hour, even in the evening, according to the pleasure of the Assembly. They have ended by the retirement of the Senate, by adjournment *sine die* or to some appointed time, or by a motion to dissolve. For a member of the Senate to make a motion to retire, however, has been considered contrary to parliamentary etiquette. If the purpose for which the convention assembled has not been concluded, the president has adjourned the meeting from time to time as the members determined.¹³²

The General Assembly has usually convened in joint convention in the chamber of the House of Representatives — indeed, that is the place prescribed by statute. Of late years Senators have sat on the west side of the House chamber. Between the years 1876 and 1882 four

Governors were inaugurated in opera houses of Des Moines on account of the lack of room in the capitol.¹³³

Upon repairing to the chamber of the House of Representatives the Senate is preceded by its president and principal officers; and it returns in the same order. The president of the Senate has enjoyed the privilege of presiding over joint conventions while the chief clerk of the House has acted as secretary. According to a statutory provision the speaker of the House presides in the absence of the president of the Senate, and if both are absent a temporary president is chosen by the convention. In the absence of the president of the Senate the president *pro tempore* has occupied the chair. Likewise in an emergency the secretary of the Senate has acted as secretary of the convention. Tellers have been appointed from the Senate by the president of the Senate and from the House by its speaker. At first there were usually two tellers; later there were four; and in recent years for the joint convention to canvass the votes for Governor there have been three tellers from each house.¹³⁴

The first order of business after the Senators have taken seats within the bar of the House is roll call; then the purpose of the meeting is stated by the president and the work is begun. The minutes of the joint assembly are read and approved before adjournment. In the election of officers by joint convention the members vote by acclamation in alphabetical order as their names are called: a second roll call is had for the verification of the votes. If no candidate receives the votes of a majority of the members present other polls are taken until a majority is obtained. It is the duty of the secretary to notify the Governor of the action of the Assembly. Two certificates of election are signed by the president and attested by the

tellers in the presence of the joint convention, one to be transmitted to the Governor and the other to be retained for recording in the journals.¹³⁵

Congress originally left the State legislatures to their own devices in the election of United States Senators. In Iowa for some years Senators were selected by the General Assembly in a joint session called for that particular purpose; but after 1866, and until 1913, each house was required to vote separately, *viva voce*, and if any person received a majority he was declared elected after the votes were compared in joint session; but if there was no election as a result of the separate balloting a joint session was held. If there was no election at the first joint session, others were held daily at noon and one ballot cast until a Senator was chosen. In 1911 the Iowa General Assembly met in joint session every day at noon from the eighteenth day of January until the twelfth day of April before Senator William S. Kenyon was finally elected.¹³⁶

EXECUTIVE SESSIONS OF THE SENATE

“The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy”, reads the Constitution of Iowa. It has usually been necessary for the Senate to hold an executive session several times during each session of the General Assembly to consider confidential messages from the Governor. Practically all of the executive sessions have been for the confirmation of appointments by the Governor, a two-thirds majority vote in executive session being required for such approval. Occasionally nominations made by the Governor have not been confirmed by the Senate.¹³⁷

Executive sessions have been held behind closed doors, and until 1902 the proceedings were not made public.

Since the Twenty-ninth General Assembly, however, whatever has transpired in executive sessions on the confirmation of appointments has usually been printed in the journal. Executive sessions have rarely lasted more than a few minutes.

Special procedure has been prescribed for the confirmation of appointments of members of the Board of Control of State Institutions, the State Board of Education, the Insurance Commissioner, an additional Judge of the Supreme Court, and the Commerce Counsel. Such nominations must be referred to a bi-partisan committee of five appointed by the president of the Senate without the formality of a motion. This committee reports the nominations to the Senate in executive session; but such nominations are never considered on the same day on which they are referred to the Senate.¹³⁸

In 1913 when the question of consolidating the higher educational institutions was before the General Assembly a joint executive session of the House and Senate was held in order that the members might become "fully conversant" with the "interests of our three great state educational institutions". Seven addresses were delivered before the convention on that occasion.¹³⁹

IX

ORGANIZATION OF THE GENERAL ASSEMBLY

BOTH the Constitution of 1846 and the Constitution of 1857 vested the legislative authority of the State in a bicameral General Assembly, of which the two branches are essentially coördinate. Practically the same functions, powers, and limitations are accorded to each house, both in constitutional and statutory provisions. Although the House enjoys the sole power of impeachment the authority to try such cases rests with the Senate. Perhaps the most exclusive power of the Senate is that of ratifying certain executive appointments. From 1846 to 1857 all revenue bills had to originate in the House of Representatives. With the exception of age qualification and length of term, Senators and Representatives are on a basis of equality.

TEMPORARY ORGANIZATION IN THE GENERAL ASSEMBLY

Before either house can proceed with its internal organization it is necessary that a quorum, consisting of a majority of its members, be present. Any number of members, however, may adjourn from day to day and "compel the attendance of absent members in such manner and under such penalties as each house may provide." Such are the provisions in the Constitutions of Iowa; but the House of Representatives has seen fit to make further regulations. Until 1864 the number of members constituting a quorum was specified, although changing successively from 20 to 32, to 36, to 37, to 44, and to 48 as the

size of the House increased. In the session of 1856-1857 just one-half of the whole number of Representatives was declared to be a quorum. During the period of the first Constitution if a bare majority was present it was necessary for the speaker to be one of the number. Furthermore, while the Constitutions empower a smaller number than a quorum to compel the attendance of absent members, the standing rules of the House have always fixed the "smaller number" at five, provided the speaker is in the chair.¹⁴⁰

For the first three sessions the appointed time of opening the legislature was at noon of the day designated in the Constitution. From 1852 until 1894 the houses were called to order at two o'clock. But since the Twenty-fifth General Assembly the hour of convening has been ten o'clock A. M. The Lieutenant Governor, being *ex officio* president of the Senate, calls that body to order; while the House of Representatives is called to order by any person claiming to be a member. Having been called to order the members-elect of each house proceed to choose a temporary secretary or a chief clerk. If the Lieutenant Governor is absent any Senator may call the Senate to order, and in such an event a president *pro tempore* is chosen.¹⁴¹ It is the first duty of the temporary recording officer of each house to receive and file the certificates of election of the apparent members, from which a temporary roll call is compiled. Other requisite officers are then elected for the time being, and a committee of five is chosen to examine and report on the credentials of the members elected.¹⁴² Finally, those members who are reported by the credentials committee as holding proper election certificates proceed to the organization of their respective houses by the election of permanent officers.¹⁴³

Ordinarily there have been almost as many temporary as permanent officers. The House of Representatives of the First General Assembly had only three temporary and five permanent officers; while in the Thirty-sixth General Assembly there were forty-one temporary and the same number of permanent House officers. In the first Iowa Senate six temporary and six permanent officers were appointed; and in the last Senate (1915) there were twenty-nine temporary and twenty-six permanent appointments — the greater number of temporary officers being due to the fact that the permanent officers of the preceding session were reappointed for the time being. Such vacancies as appeared in the list of permanent officers of the preceding session were filled by the Republican caucus. During the earlier years, especially in the period of the first Constitution, the number of temporary officers was kept at the minimum, never exceeding eight. But as time has passed more and more officers seem to have become necessary, until now several clerks, postmasters, doorkeepers, messengers, pages, and janitors are included when temporary organization is effected.¹⁴⁴

The method of selecting temporary officers has usually amounted to election, irrespective of whether they are appointed on motion, elected on motion, elected on resolution, or elected by ballot or on a *viva voce* vote, with or without nomination. Now, however, when the whole list as proposed is adopted by one vote with no dissenting voices there is no choice in the selection of temporary officers and the system practically amounts to appointment by the majority. There have been times when the majority and minority have been so equally divided that there has been difficulty in agreeing even on temporary officers. The most notable instance occurred in the

House in 1890 when fifteen days were consumed in the election of temporary chief clerk. The compensation of officers *pro tempore* is the same as that of permanent officers.¹⁴⁵

THE SELECTION OF PERMANENT OFFICERS

By statute it is provided that the members reported by the committee on credentials as holding proper election certificates shall proceed to the permanent organization of their respective houses. The election of officers, therefore, is one of the first duties of the General Assembly; it is usually accomplished within the first two or three days, although there have been cases of deadlock which seriously delayed the business of the legislature. In 1874 the House of Representatives was ten days in agreeing upon a speaker; while in 1890 the situation was even worse, the speaker being elected on the one hundred and thirty-sixth ballot after twenty-three days of voting. Some difficulty was experienced also in the election of a secretary of the Senate in 1892.¹⁴⁶

There seems to be no clear distinction between officers and employees in the General Assembly of Iowa. Perhaps no distinction need be made. They are named by law only in the section of the Code which relates to their compensation, but there is nothing in this section limiting either house to the filling of the positions specified. Officers and employees are chosen at the same time and in the same way, the journals referring to all of them as officers. The list of officers published in the *Iowa Official Register*, however, excludes such functionaries as messengers, committee clerks, and janitors. The Senate of the Twelfth General Assembly declared that for the purpose of drawing postage, paper-folders, messengers, and

janitors were officers. The janitor of the Senate was specifically included among the officers in 1870 and in 1872.¹⁴⁷

With the growth of the General Assembly and the great increase in legislative business the need of more officers has become manifest. During the period of the Constitution of 1846 the number of officers in each house was kept at the minimum. By resolution the House of the First General Assembly limited its officers to a speaker, a chief clerk, an assistant clerk, a sergeant-at-arms, and a fireman; and in the Senate the officers were a president, a secretary, an assistant secretary, a sergeant-at-arms, a messenger, and a fireman. By the time of the Sixth General Assembly, the last under the first Constitution, an enrolling clerk, an engrossing clerk, a doorkeeper, a paper-folder, an assistant fireman, a chaplain, and assistant messengers had been added to the list of Senate officers; while the House had found need for an enrolling clerk, an engrossing clerk, a doorkeeper, an assistant doorkeeper, a second fireman, first, second, third, and fourth messengers, and a second assistant clerk.¹⁴⁸

To trace the increase of officers since the adoption of the Constitution of 1857 would be simply to add assistant secretaries, assistant clerks, clerks for special purposes, and to multiply the number of doorkeepers, janitors, messengers, and pages. With the advent of steam heat the office of fireman was relegated to the heating plant and no longer comes within the scope of legislative patronage.

The officers of the House of Representatives of the Thirty-sixth General Assembly, elected on the first day of the session, consisted of a speaker, a speaker *pro tempore*, a chief clerk, an assistant clerk, a reading clerk, an

engrossing clerk, an enrolling clerk, two journal clerks, a file clerk, an assistant file clerk, a bill clerk, an assistant bill clerk, a sergeant-at-arms, an assistant postmistress, a doorkeeper, eleven assistant doorkeepers, ten pages, a telephone messenger, a chief janitor, and four assistant janitors — forty-three in all. At the same session in the Senate there was a president *pro tempore*, a secretary, a first and second assistant secretary, an engrossing clerk, an enrolling clerk, two journal clerks, a file clerk, a bill clerk, a postmistress, a sergeant-at-arms, a chief doorkeeper, nine doorkeepers, a chief of the cloak room, and three other janitors — twenty-six all told. But aside from those enumerated there were a multitude of committee clerks, a clerk for each Senator, forty-two personal clerks for the Representatives, custodians of various kinds, many additional assistants, and even a page for the chief doorkeeper in the Senate.

The speaker and the speaker *pro tempore* of the House of Representatives and the president *pro tempore* of the Senate are the only officers who are members of the General Assembly. From 1846 to 1857 the president of the Senate was also a member of the legislature, but the new Constitution gave that office to the Lieutenant Governor. The practice of maintaining sinecure offices for old soldiers has been in vogue ever since the close of the Civil War, and since 1904 has borne the stamp of legality in a law giving to old soldiers the right of preference to employment in public office. This law has served the General Assembly as an excuse for employing a multitude of officers and assistants.

There is no discrimination against women serving as officers; and indeed, the majority of clerks are women. As early as 1873 the Senate decided that the "employ-

ment of ladies'' as clerks was ''no longer an experiment'' and recommended the practice to future Assemblies.¹⁴⁹

The method of choosing officers in the General Assembly has been anything but uniform: they have been elected by ballot; elected by acclamation; selected by the adoption of a motion or resolution that a certain person or persons be chosen; and sometimes the vote on an officer has been taken on a roll call. In the earlier years when there were few officers they were usually nominated and elected separately; but now, and for many years past, it has been the practice to elect the whole list at one time.¹⁵⁰ In 1861 a list of permanent officers of the Senate was prepared by a committee, but now such lists are arranged by the caucus of the majority party. There has been almost as much disparity of method in a single session as between different sessions — some officers being appointed, some employed by other officers, and some elected on motion, *viva voce*, or by ballot. Nor has there been any discrimination in method corresponding to the importance of the officer: even paper-folders have been chosen by ballot.

The speaker of the House as soon as he is chosen is conducted to the chair by a special committee. He thereupon takes the oath of office,¹⁵¹ assumes the chair, and delivers a brief address of thanks. In the earlier years the only difference of procedure seems to have been that no oath was required. Under the Constitution of 1846 the president of the Senate was installed in precisely the same manner as the speaker of the House of Representatives, but since the Lieutenant Governor has been *ex officio* president of the Senate his installation has taken a slightly different form. Following the formal inauguration of the Governor and Lieutenant Governor, at which ceremony the oath of office is administered, a committee

of two Senators usually introduces the Lieutenant Governor to the president of the Senate who invites him to the chair. Both the outgoing and the incoming presidents deliver brief speeches. In the case of the reelection of the Lieutenant Governor he is conducted to the chair by the president *pro tempore*, whereupon he makes a few remarks. In the first installations of this sort there was possibly less formality than at the present time. Practically the same method for the installation of the presiding officers *pro tempore* obtains in both houses.

It has always been the custom for the newly elected presiding officer to administer the oath of office to other officers. They usually appear before him and are sworn in a group, but there have been cases when the oath has been administered separately. If an officer-elect is not present at the general installation he takes the oath alone when he appears. In recent years it has been the custom for officers in the House to sign the oath of office: "I do solemnly swear that I will support the constitution of the United States and of the state of Iowa, and that I will faithfully perform the duties of my office to the best of my ability, so help me God."

The term of office of the president of the Senate since 1857 has been identical with that of Lieutenant Governor; but the tenure of other officers was fixed by statute in 1858. The speaker of the House of Representatives holds his office until the first day of the regular session next after that at which he was elected. All other officers elected by either house hold office only during the session at which they have been elected. They are, however, subject to removal, without notice or hearing, by the body electing them before the expiration of the prescribed term. The term of the president *pro tempore* of the Senate is the

remaining portion of the term for which the president was elected. Many officers and employees remain at the capital after the close of a legislative session to complete the clerical work.¹⁵²

POWERS, DUTIES, AND COMPENSATION OF OFFICERS

The duties of officers in the House since 1890 and in the Senate since 1886 have been definitely outlined in the standing rules. Certain duties were mentioned before these dates, but no systematic plan was adopted. In addition to the provisions of the standing rules, resolutions have frequently been passed which assign specific duties to certain officers. Furthermore, some of the duties of the more important officers have been prescribed by law.¹⁵³

The compensation of officers and employees was subject to the prodigality or parsimony of each General Assembly until 1872. During the first constitutional period the salaries voted by the First General Assembly remained the standard: the presiding officers received two dollars a day over and above their regular compensation as members; the secretary, assistant secretaries, enrolling clerk, chief clerk, and assistant clerks were paid four dollars a day; the sergeant-at-arms, messenger, and fireman usually received two dollars a day for their services; while assistant firemen, assistant messengers, and sometimes the chief messenger were paid as low as a dollar and a half a day.¹⁵⁴

After 1860 the salaries of officers became more and more lucrative. The chief clerk of the House in the Eighth General Assembly received five dollars a day, in 1866 six dollars, and in 1870 eight dollars; while the pay of assistant clerks went up from three dollars and four

dollars to five dollars and seven dollars per day. In 1860 the enrolling clerk, engrossing clerk, sergeant-at-arms, postmaster, fireman, and doorkeeper were paid three dollars a day, and the messenger and paper-folder two dollars. In 1870 these officers, with the exception of the messenger, were voted five dollars and six dollars a day. Compensation in the Senate during the same period showed a corresponding rate of increase.¹⁵⁵

Where this system of legislative extravagance would have led can only be imagined. It was the Fourteenth General Assembly that settled the question by naming the salaries of Assembly officers in statutory law: to the secretary of the Senate and chief clerk of the House eight dollars a day, to the assistant secretaries and assistant clerk seven dollars, to enrolling and engrossing clerks five dollars, to sergeants-at-arms, doorkeepers, janitors, postmasters, mail carriers, and their assistants four dollars, to committee clerks three dollars, and to messengers and paper-folders two dollars a day. In 1880 there was a general reduction. The chief recording officers were henceforth to be paid six dollars a day, assistant secretaries and clerks five dollars, enrolling and engrossing clerks four dollars, committee clerks two dollars and fifty cents and necessary stationery, sergeants-at-arms, doorkeepers, janitors, postmasters, and mail carriers three dollars, and messengers and paper-folders a dollar and a half a day.

In 1882, however, certain increases were made. The compensation of the secretary and chief clerk was placed at seven dollars a day, assistant secretaries and clerk at six dollars, enrolling and engrossing clerks at five dollars, sergeants-at-arms, doorkeepers, janitors, and postmasters at four dollars, mail carriers at five dollars, commit-

tee clerks at three dollars and stationery, paper-folders at two dollars and a half, and messengers at two dollars a day. In 1894 the new officers that had been added from time to time — bill clerks, file clerks, speaker's clerk, and Lieutenant Governor's clerk — were to be paid four dollars a day, and the pages of the presiding officers were given two dollars and a half.

At present the rate of compensation is fixed by the provisions of the *Code of 1897*. The secretary and chief clerk got six dollars a day; assistant secretaries and clerks, journal, enrolling, and engrossing clerks five dollars; speaker's clerk, president's clerk, and sergeants-at-arms four dollars, postmaster and assistants, mail carriers, bill clerks, file clerks, doorkeepers, janitors, and committee clerks three dollars; Lieutenant Governor's and speaker's pages two dollars; and messengers one dollar and fifty cents. Stationery is furnished to each of the clerks, to the secretaries, and to their assistants. Since 1872 no allowance has been made to officers for stationery, postage, newspapers, or other perquisites. Extra compensation to House employees in the form of tips has been positively forbidden since 1909: to accept a tip is cause for the removal of an employee.¹⁵⁶

STANDING COMMITTEES IN THE GENERAL ASSEMBLY

There were in the First General Assembly fifteen standing House committees and sixteen standing Senate committees.¹⁵⁷ But the last General Assembly (1915) seems to have found use for one hundred and five standing committees, sixty-one in the House and forty-four in the Senate — numbers equalled only in the Twenty-first General Assembly. In the last three sessions there have been over one hundred standing committees, and in 1909 there

were ninety-nine. The increase in the number of standing committees has been gradual, corresponding rather closely to the increase in the number of members, and to the increase of problems occasioned by a growing, developing Commonwealth. During the State period there have been standing committees in the House of Representatives on ninety-one subjects, while in the Senate the number of subjects has been eighty. Some standing committees have been very short-lived: in the House standing committees on public works, sanitary affairs, centennial exhibition of 1876, reorganization of the judiciary system, Soldiers' Home, and conservation of forests and water power have endured only one session; and the same situation obtained in the Senate in respect to committees on university and university lands, Soldiers' and Orphans' Home, and suffrage.

Many standing committees have lasted only two sessions. The explanation is to be found either in the temporary character of their work or in the fact that they have been superseded by committees on practically the same subjects but with new names. In the Senate only eleven of the standing committees of the First General Assembly are still maintained — those on internal improvements, roads, incorporations, county boundaries, and new counties having been discontinued. After a lapse of forty-seven years the old committee on military affairs was revived in 1915. The last General Assembly also divided the old Senate committee on judiciary into two sections. Five of the standing committees of the House in the First General Assembly — common schools, expenditures, incorporations, public buildings, and new counties — have been dropped.

Until the adoption of the present Constitution the

number of members composing standing committees was fairly stable. In both houses the usual number was five — with a few exceptions like the committees on enrolled and engrossed bills which consisted of two members. Since 1860, however, the number of members on a given committee is likely to have been anything from five to forty-three.¹⁵⁸ Indeed, there seems to have been considerable difference of opinion from session to session as to the number of members that should compose some committees: the ways and means and agriculture committees in the House have had five, nine, twelve, twenty-five, seventeen, and forty members. As a general rule the number of members on a committee corresponds to its importance. Standing committees on roads and highways, ways and means, appropriations, schools, and railroads, have always been relatively large committees; while committees on enrolled bills, engrossed bills, federal relations, and rules have approached the minimum.

That the presiding officer of each house should appoint all committees unless otherwise directed has been a well established rule since Iowa became a State, although an attempt was made in 1911 to have the standing committees of the House appointed by a committee of nine members instead of by the speaker. The first named member of a committee acts as its chairman.¹⁵⁹

Clerks were employed by committees early in the history of the General Assembly. The first definite record of such a practice in the House of Representatives appears in the journal for the session of 1856–1857 and in the Senate in the journal for 1870. Since 1880 standing committees of the Senate have been permitted to employ clerks by a majority vote of the whole committee. For the last four sessions there have been fifty committee clerks

— one for each Senator. Indeed, in the Thirty-sixth General Assembly each Senator had the privilege of appointing a committee clerk. These clerks, according to the rules of the Senate, must be competent stenographers and of good moral character.

In the House of Representatives there have been as a rule fewer committee clerks than in the Senate, the exact number being determined each session. In 1882 the plan of appointing a special committee to apportion the clerks among the committees was adopted. Sometimes one clerk was assigned to several committees. Moreover, the chairman of a committee to whom a clerk was given had the privilege of selecting the clerk. Before the committee clerks were assigned at the last four sessions of the General Assembly a resolution was adopted in the House fixing the maximum number. Since 1906 the minority has been allowed a certain number of committee clerks. When not on committee duty clerks are subject to other assignments of work by the speaker or chief clerk; and any Representative may request a committee clerk to do work for him.¹⁸⁰

Since 1884 it has been the duty of the chairmen of Senate committees to announce, just before the adjournment of the daily session, the time and place of meeting of their respective committees. No standing committee of the House of Representatives (or Senate committee in the first three General Assemblies) has been allowed to sit during the session of the House without special leave. That a committee quorum should consist of seven members, or a majority, has been a standing rule of the House since 1882. The Representative who moves to refer a matter to a committee has always been privileged to confer with that committee during the consideration of his

proposition, but since 1886 no one but committee members have been permitted to be present when the final vote was taken. In 1913 the further rule was added that final action should not be taken on the same day on which a public hearing had been held.

Standing committees of the Senate since 1880 have been privileged to have bills and resolutions printed under specified conditions. The rule that any standing House committee could have printed any bill of public importance referred to it was adopted in 1872 but abrogated in 1886. When a vote is taken in a committee on the merits of a bill or resolution the chairman must see that no one but members and the clerk are present, unless the committee orders otherwise. The Senate has had a rule to this effect since 1886. House committees, except those on appropriations and judiciary, since 1913 have been required to record yea and nay votes on motions finally disposing of a bill. A new rule adopted by the House in the Thirty-sixth General Assembly directs the committee chairman to see that the minutes of the meetings are properly kept and at the end of the session reported to the chief clerk. In 1886 the Senate adopted the rule that all committee reports on bills or resolutions should be made in duplicate and be accompanied by the original copy. Two years later an exception was made of the committees on enrolled and engrossed bills. A minority of a House committee has been specifically permitted since 1902 to make recommendations, which by a vote of the House may be substituted for the committee report. (For tables showing the names and number of members of standing committees in Iowa see Mr. Horack's paper on *The Committee System* in this volume.)

SIFTING COMMITTEES IN THE GENERAL ASSEMBLY

The much abused sifting committee, while it is not included in the list of standing committees in the rules and exists for only a few days at the end of the session, may be classed as a standing committee inasmuch as it supersedes nearly all of the regular standing committees. The first sifting committee appeared in the House in 1860 and in the Senate in 1864. Sifting committees have been appointed usually from two to eight days before the close of a session, although in 1888 in the Senate such a committee was appointed only the day before adjournment, and again in 1872 it was appointed twenty days before the end of the session. The sifting committee of the House in the Thirty-sixth Assembly was appointed twenty-six days before adjournment. Since 1902 the sifting committee in each house has consisted of seven members. At some sessions it has been given full control over all bills, but more frequently some exceptions are made, such as appropriation bills, bills favorably reported, railroad bills, and bills on their second reading.

SELECT COMMITTEES IN THE GENERAL ASSEMBLY

Although the bulk of the work of a legislative body is done by the standing committees, there are many matters temporary in character or special in nature that seem to demand consideration by committees which are dissolved as soon as their work is accomplished. To enumerate the purposes for which such committees have been appointed would be to name practically all of the select committees in the history of the Iowa legislature. Some of the more common of the select committees are those on credentials, to notify the other house of a particular action, to inform the Governor of a particular action, to investigate claims,

to determine the time and place of meeting of standing committees, to prepare memorials, to make arrangements for the Governor's inauguration, to examine committee clerks, to attend funerals, to investigate particular problems, and to visit institutions. Appointed by the presiding officer, these committees are composed of almost any number of members. Their membership is determined in various ways — sometimes by election districts, sometimes by the occupation of the members.

JOINT COMMITTEES IN THE GENERAL ASSEMBLY

Joint committees, consisting of members of both houses, have been frequently appointed to handle matters in which both houses are concerned. Usually joint committees are select committees. Sometimes both select and joint committees, which are appointed to investigate a subject or visit an institution, are classified according to the purpose of their appointment as investigating or visiting committees. Conference committees are committees specially selected and acting jointly to adjust differences between the two houses with reference to the passage of particular bills. In the General Assembly of Iowa the joint standing rules have always governed the action of conference committees.

COMMITTEE OF THE WHOLE HOUSE

The use of the committee of the whole has declined since Territorial days, when all bills had to be considered by it. There is no evidence of either house of the last General Assembly having gone into the committee of the whole. When there has been any considerable use of the committee of the whole a permanent chairman has been appointed. The standing rules which govern the action

of the committee of the whole seem in general to have come down from the Territorial period.¹⁶¹ (For a more detailed discussion of legislative committees see Mr. Horack's paper on *The Committee System* in this volume.)

X

PROCEDURE IN THE GENERAL ASSEMBLY

THE deliberations of the General Assembly have been guided in the main by the standing rules of the two houses; but these standing rules contain by no means all of the practices of parliamentary procedure. Accordingly, some manual of parliamentary practice has been followed in all cases where it is applicable and not inconsistent with the standing or joint rules of the legislature. *Jefferson's Manual* was the accepted authority in the House of Representatives until 1852 and in the Senate until 1862. Since 1862 the Senate has been governed by *Cushing's Manual*; but the House did not adopt *Cushing's Manual* until 1888, having for thirty-six years resorted to the rules of common parliamentary law rather than relying upon any particular manual as authority. Cushing's name was the last word in parliamentary law in the House of Representatives from 1888 to 1913; but the last two General Assemblies have witnessed *Robert's Rules of Order* holding sway in the lower house.

ADOPTION OF STANDING RULES

At the beginning of each session of the General Assembly a committee is appointed in each house to frame standing rules. The committees appointed in the First General Assembly recommended the adoption of the rules of the last Legislative Assembly of the Territory, with only such modifications as were necessary on account of the change from Territorial to State government. The

committee on rules since the First General Assembly has done little more than suggest certain amendments from time to time: the fundamental rules relative to the passage of bills have remained practically unchanged. The Senate rules were thoroughly overhauled in the Fourth General Assembly and greatly reduced in volume. While a few new rules have been added from session to session, the greatest innovation was made in 1886 when the duties of Senate officers were included. There were practically no changes made in the rules adopted by the House of Representatives until 1882, when two new rules concerning committees were added. In 1884 three more rules on the introduction of bills, on decorum, and on persons allowed within the bar of the House were added. The duties of officers were included for the first time in 1890. Since then there have been only minor changes and additions. Sometimes, while the content of the rules has remained the same, their order and numbers have been altered.

To insure the observance of the standing rules there have been rules to the effect that no standing rule or order may be rescinded or suspended without a vote of two-thirds of the members present in the House, and by a vote of three-fourths of those present in the Senate—the House rule requiring also that a day's notice be given. In spite of this precaution certain rules, particularly the one forbidding a bill to be read a third time on the day of its first and second readings, have been suspended without compunction.

ORDER OF BUSINESS

The order of daily business in the Senate of the First General Assembly was (1) petitions and memorials, (2)

resolutions, (3) committee reports, (4) communications on the president's table, (5) reports offering grounds for a bill, (6) bills before the Senate and unfinished business, and (7) general file of bills and papers agreeably to their introduction.¹⁶² By 1864 introduction of bills had been inserted as the second order of business, then came (3) resolutions, (4) communications on the president's table, (5) reports of standing committees, (6) reports of select committees, (7) third reading of bills, (8) bills, other matters, and unfinished business, and (9) general orders of the day. In 1890 the eighth order was divided, bills and other matters becoming the ninth order of daily business. The last change was made in 1909, when the seventh order became unfinished business, the eighth became the third reading of bills, and the ninth became the general order of the day.

The order of daily business in the House of the First General Assembly was (1) petitions and remonstrances, (2) resolutions and notices to bring in bills, (3) committee reports, (4) bills to be introduced, (5) communications on the speaker's table, (6) bills and resolutions on second reading, (7) bills on their passage, (8) reports which offer grounds for bills, and (9) bills and other matters before the House and unfinished business of the preceding day.

When the Constitution of 1857 became the organic law of the State the practice of requiring notice for the introduction of bills was abandoned. In 1862 resolutions were made the fourth order of business and committee reports and the introduction of bills the second and third respectively. At the next session of the General Assembly a new order, resolutions laid over for a day, was added between committee reports and the introduction of bills. In 1872 business pending at the last previous adjourn-

ment was made the first order of daily business, while in 1874 the following was suffixed as the eleventh order of business: "On and after the first day of March of each regular session, bills and joint resolutions which have been read the second time and engrossed, shall be taken up in their proper order at 3 o'clock in the afternoon of each session, and put upon their passage." This feature was retained until 1913; but the date was changed in 1878 to February 10th, in 1890 to March 10th, and again in 1892 to February 10th. Under the order of committee reports the more important standing committees were arranged according to precedence from 1882 to 1913.

INTRODUCTION OF BILLS

Some of the rules practiced in the Thirty-sixth General Assembly relative to the introduction of bills had an early origin. The Constitution of 1846, for example, specified that bills could originate in either house, except revenue bills which should originate in the House of Representatives. Under the Constitution of 1857, however, any bill may be introduced in either house and may be amended, altered, or rejected by the other. The Senate rules of 1846-1847 provide that every bill "shall be introduced on the report of a committee, or by motion for leave, on giving at least one day's previous notice." The "previous notice" clause was omitted in 1864, but otherwise the old rule is still intact. The same rule obtained in the House procedure of the First General Assembly, but when the new Constitution was adopted one day's previous notice was no longer necessary for the introduction of bills. By 1864 the whole rule had been laid aside.

Although bills had for many years been printed it was:

not until 1902 that the Senate formally adopted the rule that a copy of each bill should be delivered to the State printer: it was not until 1911 that the present rule requiring each bill to be typewritten, double-space, and accompanied by two copies was printed in the standing rules. In 1915 the House of Representatives demanded three copies of bills; but from 1904 until 1915 the typewritten House bill had to be accompanied only by a carbon copy, the one marked "original" and the other "printer's copy".

Senate bills have been endorsed, according to a standing rule, with the name of the Senator or committee introducing them, ever since the days of the First General Assembly. It was not until 1862, however, that a similar provision (the name of the Representative and the name of his county being required) was incorporated in the standing rules of the House of Representatives.

"No Bill, Memorial, or Joint Resolution, shall be printed unless ordered by the House", reads a House rule of 1846-1847. The Fourteenth General Assembly allowed committees to print bills of public importance; and finally in 1886 appeared the present House rule on printing — the exact opposite of the first one. It was in 1868 that the Senate adopted a conditional rule on printing: that such matters should be referred to the committee on printing for advisement. The present Senate rule on the printing of bills, like that of the House, was adopted in 1886. Almost all bills and joint resolutions in both houses are now printed unless otherwise ordered.

Much uncertainty has always marked the procedure in respect to joint resolutions but the practice of both houses, standing rules to the contrary notwithstanding, has been to treat them as bills. In 1864 there was a House

rule specifying that joint resolutions need not be framed or treated as bills but should be subject to the rules pertaining to ordinary and concurrent resolutions. This rule obtained until 1898, when a provision requiring that joint resolutions should be treated as bills was agreed to. It was in 1896 that the Senate decided to make all rules relative to bills "apply with equal force to joint resolutions." Before that date the Senate standing rules were silent on the subject.

The first rule requiring bills to be introduced before a certain date appeared in 1904. Appropriation bills could not be introduced except by the committee on appropriations, after March 1st in the House and March 15th in the Senate: the Senate of the Thirty-fifth General Assembly changed the date to March 1st. Furthermore, no appropriation bill in the Senate could be taken up until the third legislative day after the committee on appropriations had prepared a schedule of appropriation bills. One section of the Senate rule necessitated the consideration of all appropriation bills in committee of the whole, with the president of the Senate presiding. This rule, however, was abolished in 1907. In 1909 the House framed the rule that appropriations for educational institutions must be introduced by February 15th — a rule that was adopted by the Senate in 1913. Since 1913 the introduction of bills of any kind, except those introduced by committees as committee bills, has not been allowed in the Senate after March 30th and in the House after March 10th. It has been the duty of the committee on appropriations since 1904 in the Senate and 1915 in the House to prepare schedules of appropriations recommended and place them on the desks of the members — by the first Monday after March 15th in the Senate and by March 10th in the House.

The Senate rule that ordinary and concurrent resolutions shall not be acted upon the same day on which they are introduced or received, but must lie over one legislative day if any member objects to their immediate consideration, was established in 1888. Originally joint resolutions were included, but they were omitted in 1896 at the session that caused joint resolutions to be treated as bills.

Since the duties of officers were first outlined in the Senate rules in 1886 the secretary has been charged with the custody and safe-keeping of all bills except when they are in possession of a committee, and even then he has a proper receipt therefor. He must endorse on every bill and on every joint or concurrent resolution the date of its introduction or receipt from the House, the name of the Senator introducing it, and what action has been taken thereon. The sergeant-at-arms must see that the printed bills are placed on the desks of the members, take charge of the file rooms, and see that no bill is given out except upon proper authority. When the duties of House officers were placed in the standing rules, the duties of the secretary and sergeant-at-arms of the Senate were applied verbatim to the chief clerk and sergeant-at-arms in the House.

The First General Assembly decided that when a bill which had been passed by one house was rejected in the other it could not again be introduced at the same session without five days notice and leave from two-thirds of the members of the branch in which it was to be renewed. In 1858, however, the first Assembly under the new Constitution required the leave of "two thirds of the members voting thereon." Again, in 1896 the rule was changed to its present form: leave must be had of a "majority of the members of the House in which the same is sought to be introduced."

READING OF BILLS

The standing rules relating to the reading of bills are practically the same in both houses, and have persisted with scarcely a word of alteration since the year of the First General Assembly. Every bill must have three several readings in both branches of the legislature, but no bill may be read a second and third time on the same day without the suspension of the rules. All through the period of the first Constitution it appears that House bills could not have two readings on the same day without special order. Neither could they be dispatched in any order other than that in which they were introduced. The first reading of a bill or joint resolution has always been for information, and if no objection is offered or if the question to reject is lost the bill goes immediately to the second reading. After the second reading a bill is ready for reference to a committee, for consideration in committee of the whole, or for engrossment.

There have been some alterations of the rules fixing the time for the third reading, after engrossment, but these changes are inconsequential. The Senate has specified that no bill shall be committed to a committee or amended until it has been twice read: the House of Representatives has taken such procedure for granted. When House bills are reported back from committees with amendments they are considered on their second reading. Rider amendments were allowed on the third reading of bills in the early days, but now only errors or omissions may be corrected by way of amendment, and no debate is allowed at that time. From 1846 until the present the Senate rule that a motion to engross a bill for a third reading on a particular day shall not preclude the question to engross it for a third reading on another day has

prevailed. After the third reading no amendments are entertained except by unanimous consent of the members present. In 1862 the Senate rule was adopted that the vote on the final passage of a bill should be taken immediately after the third reading.

BILLS IN THE HANDS OF COMMITTEES

The merits of bills are really decided at the meetings of the standing committees. Ordinarily bills are referred to the appropriate standing committee after the second reading, although that is not the only recourse. The Senate has always insisted that a bill must be read twice before it is committed. Originally in both houses the question was put after the second reading whether a bill should be committed to a select or standing committee or to the committee of the whole. This procedure is still retained by the House rules, but was abandoned by the Senate in 1911.

From 1896 until 1911 the president of the Senate, if there was no objection, referred bills to an appropriate committee or to such committee as the Senator who introduced the measure might suggest. Now the president simply refers a bill to the appropriate committee unless the Senate orders otherwise. When it is decided to consider a bill in committee of the whole after the second reading, it is the custom in both houses to fix a day for the hearing. The rule that when a question arises over the reference of a subject and various committees are proposed they shall be voted on in the order of committee of the whole, standing committee, and select committee, has endured in the House ever since Iowa became a State.

All bills to appropriate money are referred to the standing committees on appropriations — a rule that was

adopted by the House in 1898 and by the Senate in 1904 and which applied to bills coming from the other house the same as to bills in the house of their original introduction. The House of Representatives also has a rule that bills pertaining to the levy, assessment, or collection of taxes must be referred to the committee on ways and means. A Senate rule allows a bill to be referred to a committee any time previous to the third reading; while the corresponding House rule provides that bills may be recommitted to a committee at any time before their passage. The House rule dates from the First General Assembly; and the Senate rule had its origin at the same time, having doubtless developed from the rule that a bill might be committed at any time previous to its passage. By 1864 the word "passage" in the Senate rule had been changed to "third reading". The Senate during the first two General Assemblies considered a bill a second time in the committee of the whole if any amendments were reported by the committee to which it had been referred. The question of engrossment and third reading was also put again.

A particular time is designated in the order of daily business for the reports of committees, but in this matter certain standing committees have been more privileged than others. The House rules of the First General Assembly allowed the committee on enrolled bills to report at any time; and in 1911 the same right was accorded the committee on engrossed bills. Since 1886 it has been in order for the Senate committees on enrolled and engrossed bills, rules, and printing to report at any time when a member is not addressing the Senate.

In 1886 the House of Representatives declared that all bills referred to committees should be reported back to

the House within ten days; in 1888 the time limit was set at seven days; but in 1890 the House reverted to the original rule of ten days. It became the duty of the committee chairman or clerk to note the date of reference upon the bill. Not until 1915 did the Senate deem it advisable to frame a standing rule of this character, and the time allowed is fifteen days. In both houses more time may be allowed by a vote of the house.

Special rules have been adopted in regard to appropriation bills: they must all be reported in the Senate by the first Monday after March 15th and in the House by March 10th. Bills coming from the House to the Senate after the first Monday after March 15th and those coming from the Senate to the House after March 10th must be reported back in three days in each case, and there is the further specification in the House rules that such bills must remain on the calendar three days after they are reported by the appropriations committee. These rules were adopted by the Senate in 1904 and by the House in 1915.

PROCEDURE IN COMMITTEE OF THE WHOLE

While the committee of the whole has functioned in the Senate fully as much as in the House of Representatives it is only in the standing rules of the lower house that its procedure has been described. From 1846 to the present time there has been scarcely a change in the procedure of this committee which is codified in the following rules:

50. In forming Committees of the Whole House, the Speaker shall leave his Chair, and a Chairman to preside in Committee shall be appointed by the Speaker.

51. Upon bills committed to Committee of the Whole House,

the bill shall be first read throughout by the Clerk or Chairman, and then again read and debated by clauses, leaving the preamble to be last considered; after report, the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken.

52. All amendments made to an original motion in Committee shall be incorporated with the motion, and so reported.

53. All amendments made to a report committed to a Committee of the Whole House, shall be noted and reported as in case of bills.

54. All questions, whether in Committee, or in the House, shall be propounded in the order which they were moved, except that in filling up blanks, the largest sum and longest time shall be first put.

55. The rules of the House shall be observed in Committee of the Whole House, so far as they are applicable.

The only alteration made was that effected by the Third General Assembly in rule fifty-four — the part relating to questions being propounded in the order in which they were moved was omitted.

ENGROSSMENT AND CERTIFICATION OF BILLS

Under the rules all bills just previous to their third reading are engrossed. Until 1904 bills were engrossed "in a fair round hand"; but since that time they have been written with a typewriter equipped with a black record ribbon. During the first three sessions of the General Assembly it appears that the Senate enforced the rule requiring the standing committee on engrossed bills to examine all engrossed bills before they were passed; errors were corrected and the report made forthwith.

Since 1857 there has been a constitutional provision that a bill in order to pass the General Assembly must have the assent of a majority of all members elected to

each branch. The question of the final passage of a bill, furthermore, must be taken immediately upon the last reading and the yeas and nays entered upon the journal.

When a bill passes either house it is certified by the chief clerk or secretary and the day of its passage noted at the foot of the bill. There has been no deviation from the custom in Iowa that these officers must also endorse on every bill the date of its introduction or receipt, by what member introduced, and the action taken thereon. A House rule adopted in 1846 requires that all "Acts, Addresses, and Joint Resolutions shall be signed by the Speaker".

A bill having been approved in one house is transmitted to the other; whereupon the action taken and the date are endorsed upon it and signed by the secretary or chief clerk. Such procedure has been in vogue since 1890. With the bill, according to the rules since 1846, are transmitted all papers upon which it is founded.

AMENDMENT OF BILLS

Bills received from the other house are treated in the same manner as bills that are introduced directly, either house enjoying the privilege of amending bills which originated in the other house. Since 1864 Senate bills returned from the House with amendments have been placed on the order of third reading, unless the Senate directs otherwise. If the amendment is adopted by a constitutional majority the bill passes and no further vote is necessary. But if either house amends a measure and the other refuses to concur in the amendment it becomes necessary for the house offering the amendment to either insist or recede. In 1890 the rule was adopted that if a motion to insist upon an amendment was decided

negatively the action was deemed to be a recession from the amendment. Then in 1898 the paradoxical provision was added that "when a measure originating in one House is amended in the other, the House in which it originated may amend such amendment, and a motion therefor shall take precedence of a motion to recede, and a motion to recede of a motion to insist." Not until 1911 was this impossible rule of procedure revised, when it was made to read that a motion to amend should take precedence of a motion to concur, while the rule declaring the precedence of a motion to recede over a motion to insist was incorporated in a provision that in case the originating house should refuse to concur in an amendment of the other house the house which made the amendment may either recede or insist and in that case a motion to recede takes precedence of a motion to insist. If the houses continue to disagree the only recourse is the appointment of a conference committee.

The rules of the First General Assembly concerning disagreements between the two houses simply stated that in such an event either house might request a conference, whereupon committees were appointed by both houses. They met at a convenient hour and presented to each other, verbally or in writing as either committee should choose, the arguments of their respective houses for and against the amendment. There were a few slight changes of the rules in 1858, chiefly to simplify the procedure of the conference committee. In 1864 the contingency of either house disagreeing to the report of a conference committee was met by that house being obliged to appoint a second conference committee which was acceded to by the other house before adhering to the report of the first conference committee. If the houses still disagreed the

bill was lost. A conference committee could be appointed or report any time.

For ten years the conference committee rules remained unchanged, but confusion resulted because reports were made to both houses at the same time — the house offering the amendment being supposed to wait until the dissenting house agreed. So in 1874 the rule was adopted that the conference committee should report first to the disagreeing house and notice of its action should then be sent immediately to the other house. In case the conference committee failed to reach an agreement the papers referred to the conference committee were left with the house referring them. An agreeing conference committee report was made, read, and signed in duplicate by all the committee members or by a majority of those of each house, one report being retained by the committee from each house.

Again in 1890 the conference committee rules were revised. The burden of reconciliation was placed upon the house making the amendment, for if the other house refused to concur the house which proposed the amendment had either to insist or to recede. In case of insistence it became necessary for the house insisting to request the appointment of a conference committee. Usually such a committee was to consist of four members from each house. A few ambiguities were also removed by the Twenty-third General Assembly. In 1911 the clauses were omitted which provided that conference committees could be appointed and report any time and that the adherence of both houses to their disagreement caused the bill to be lost. (See also Mr. Patton's paper on the *Methods of Statute Law-making in Iowa* in this volume, pp. 217-229.)

ENROLLMENT OF BILLS

The joint rules of 1846 made it necessary for all orders, resolutions, and votes which were presented to the Governor for approval to be previously enrolled, examined, and signed as in the case of bills. Practically the only difference in the present procedure is that memorials have been added to the list. In regard to the enrollment of bills the First General Assembly had this to say: "After a bill shall have passed both Houses, it shall be duly enrolled by the Secretary or Clerk of the House in which it originated, before it shall be presented to the Governor." When, however, the Constitution of 1857 went into operation and the office of enrolling clerks had been created the rule was modified making the enrolling clerk of the house in which the bill originated responsible for its enrollment. The secretary or chief clerk now simply certifies the fact of the bill's origin. The only change in the examination of enrolled bills has been that the standing committee of two from each house, appointed to compare enrolled with engrossed bills and correct the errors, now reports to both branches of the Assembly instead of to the house in which the bill originated.

SIGNING OF BILLS

From the days of the First General Assembly there has been a provision that all bills, after the examination and report of the enrollments committee, shall be signed first by the speaker of the House and then by the president of the Senate — the order of signing being determined by the joint standing rules. After a bill has been thus signed in each house it is ready for transmission to the Governor. Until 1896 bills were presented to the Governor by the committee on enrollments, but since

that year this function has been performed by a committee of the house in which the bill originated. During the period of the first Constitution it was required that each bill be endorsed with a certification as to its origin, signed by the secretary or clerk of the house in which the bill originated. After presentation to the Governor the committee has always reported the date of such presentation; and this information was entered upon the journals of both houses until 1858, after which time it has been recorded only in the journal of the house in which the bill originated.

In Iowa if the Governor approves of a bill he signs and dates it, and thereby it becomes a law. But if the Governor does not approve he must return the bill with his objections to the house in which it originated, where it is reconsidered. If both houses pass the bill a second time, by a yea and nay vote, it becomes a law without the Governor's signature. Under the first Constitution an affirmative vote of two-thirds of the members present in each house was necessary to pass a bill over the Governor's veto; but the Constitution of 1857 requires the approval of two-thirds of all the members of each house. A bill passed over the Governor's veto is signed by the presiding officer in each house. If the Governor does not return a bill within three days, Sunday excepted, it becomes a law just as if he had signed it, unless the General Assembly by adjournment prevents the bill's return. Such bills are authenticated by the Secretary of State. In case the General Assembly adjourns before the Governor has had a bill three days the Constitution of 1857 provides that he must deposit it in the office of Secretary of State with his approval or objections within thirty days after the adjournment. When bills have become

laws they are filed in the office of Secretary of State where they are prepared for publication and distribution.¹⁶³ (For a detailed discussion of legislative procedure see Mr. Patton's paper on *Methods of Statute Law-making in Iowa* in this volume.)

XI

THE GOVERNOR AS A FACTOR IN STATE LEGISLATION

THE Organic Act of the Territory declared that the Governor should be a constituent factor in the legislative authority; but both of the State Constitutions specifically provided that the executive and legislative departments should be entirely separate, "and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others," except in express cases. While the doctrine of the separation of powers is thus clearly enunciated there are, nevertheless, numerous points of contact between the legislative and executive departments.

The General Assembly canvasses the vote for Governor and Lieutenant Governor, and in cases of tie (of which there have been none thus far in Iowa) elects one of the candidates. The same body inaugurates the Governor and Lieutenant Governor, and upon occasion it may impeach and try them. In the ratification of certain appointments, moreover, the Senate coöperates with the chief executive.

On the other hand, the Governor may convene and adjourn the Assembly on particular occasions; he may proclaim special elections to fill vacancies therein; he makes recommendations for legislation; and he may veto bills which the Assembly has passed. The Lieutenant Governor, for his part, presides over the Senate and in no small measure influences the character of legislation.

At every regular session of the General Assembly the Governor has communicated by message the condition of the State and recommended such action as he deemed expedient; and from time to time he has transmitted special messages to the General Assembly on particular subjects. Furthermore, at the time of his inauguration the Governor, in an address to the General Assembly, outlines the policies of the administration and emphasizes the problems which will demand the attention of the State government. That these messages and inaugural addresses of the Governor have exerted a marked influence in legislation may be illustrated by a few notable examples.

To meet the exigencies of the new Constitution, James W. Grimes recommended to the General Assembly of 1858 many changes in the statutes of the State, chief among which were the laws relative to taxation and banks. Accordingly the Seventh General Assembly enacted a new statute on revenue which inaugurated the period of administrative decentralization in taxation in Iowa. Moreover, it is significant that the first banks in Iowa with power to issue paper money were provided for in two banking acts of the same Assembly.¹⁶⁴

When William Larrabee became Governor in 1886, after eighteen years of continuous service in the Iowa Senate, he was prepared to use his great influence in securing legislation regulating the railroads. Antedating by several years all of the progressive leaders, Mr. Larrabee, not only in his biennial messages but in his inaugural addresses as well, urged the abolition of free railroad passes to public officials, the establishment by statute of equitable passenger and freight rates, and the maintenance of a board of competent railroad

commissioners authorized and empowered to exercise full and complete supervision over the railroads of the State. At the first session of the General Assembly during Governor Larrabee's administration forty-five railroad bills were introduced in the House of Representatives and sixteen in the Senate—all of which were defeated. The Twenty-second General Assembly (1888), however, placed upon the statute books of this State railroad legislation which, considering the period, was remarkable for its completeness and for the results which were obtained.¹⁶⁵

Albert B. Cummins came to the Governor's chair in 1902 after eight years of bitter political opposition on the part of the railroads. Before Mr. Cummins retired from the governorship the influence of the railroads had been broken, a primary election law had been enacted, and railroad taxation had been made more equitable—reforms which he had urged and reiterated in his messages to the General Assembly from 1902 to 1908.¹⁶⁶

During the State period the Governors of Iowa have enjoyed the prerogative of a limited veto. The framers of both of the Iowa Constitutions considered the veto function as legislative in nature rather than executive.¹⁶⁷ The Constitution of 1846 stipulated that upon the presentation of a bill to the Governor, if "he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been

presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly by adjournment prevent such return."

The Constitution of 1857 differs from that of 1846 in providing that vetoed bills can be passed over the Governor's negative only by a majority of two-thirds of all members of both houses. Furthermore, the following clause was added in 1857: "Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof."¹⁶⁸

Nineteen bills were vetoed by the Governors who served under the first Constitution. Ansel Briggs vetoed only one measure — a bill to release two bondsmen from their obligation. An attempt to pass the bill over his objections failed. Stephen Hempstead had occasion to veto eight bills, and in every instance there was an attempt to pass the measure over his veto but without success. One bill was rewritten, passed, and vetoed a second time. The third Governor of the State, James W. Grimes, exercised his veto prerogative ten times — with the exception of Robert Lucas, more times than did any other Governor in the history of Iowa.

Since 1857 there have been more than thirty bills which have met the fate of an executive veto; and not one law has been enacted without the Governor's approval, although some have been repassed by one house of the Assembly. In recent years the number of vetoes has noticeably decreased. Indeed, during the six years from 1876 to 1882 no measures were vetoed. At least thirteen

of the bills disapproved under the present Constitution have been submitted to the Governor within the last three days of the session of the General Assembly and therefore have been deposited with the reasons for their rejection in the office of the Secretary of State. Until 1902 only two Governors, Joshua G. Newbold and John H. Gear, had not exercised the veto prerogative.¹⁶⁹

The real measure of the Governor's control over legislative action lies not so much in his constitutional powers as in his personality. To successfully influence legislation the Governor must be a man of purposeful character and with positive force. There have been Governors in Iowa who were content to allow legislation to take its course in the General Assembly unaided by the executive department. Again there have been affirmative chief executives, men who sensed the needs of the times and made an effort to meet issues positively. Lucas, Kirkwood, Larrabee, Boies, and Cummins were such men.

Thus, while apparently the legislative and executive departments are entirely separate and distinct it is to be observed that the Governor has often exerted a considerable influence in the enactment of statute law in Iowa, not only through his advice to the legislature and his veto power, but also because of his personality and political affiliations.

XII

CHARACTER, PUBLICATION, AND DISTRIBUTION OF STATE STATUTES

THE mass of State legislation in Iowa possesses many features which distinguish it in character from the statutes enacted during the Territorial period. The proportionate number of acts pertaining to the form and organization of governmental agencies has been greatly reduced. While there have been many changes in local government, while advanced notions of administering municipal affairs have been adopted, and while there have been frequent changes in the statute law regulating the selection and conduct of public officials, the bulk of such enactments is relatively small and unimportant.

The amount of special legislation, which was very large during the Territorial period, has diminished since 1846, partly on account of constitutional restrictions but also because of a growing public sentiment against acts of a local or special nature. Special legislation is still enacted, but it is in the guise of general provisions of a limited application. (For a further discussion of special legislation see Mr. Pollock's paper on *Some Abuses Connected with Statute Law-making* in this volume, Ch. VII.)

CHARACTER OF STATE STATUTES

It has been noted that while Iowa was a Territory legislation relative to the larger social and economic problems was meager: complex industrial and civic conditions had not then developed. During the State period, how-

ever, measures dealing with these problems have steadily increased in number and importance. The roots of such modern legislation as the laws regulating corporations, controlling labor conditions, providing for the care of dependent and defective people, promoting the construction of internal improvements, offering encouragement to agriculture, and prohibiting the manufacture and sale of intoxicating liquor are to be found in the early years of statehood. At a comparatively early date interest rates were regulated; a law on mechanics' liens was enacted; poor relief was provided and homes for the insane, the blind, and the deaf were established; an attempt was made to make the Des Moines River a great inland waterway for commerce; the State agricultural society was formed and county fairs were organized; and the first prohibitory law was placed on the statute books of Iowa.

With the tendency of legislation to reflect more and more the social and economic conditions of the times there has been a corresponding drift toward legislation of a positive, even paternalistic, character. In the drafting of early acts, for example, legislators were content merely to define a crime and prescribe the penalty; but now laws are to be found which provide for the reformation of criminals, the parole of prisoners, and the suspension of sentence in certain cases. People are not only cautioned against misdeeds, but are informed that there are some things which must be done for the benefit of their neighbors: fire protection and sanitation are now deemed the legitimate subjects of legislative enactments. (For a discussion of other phases of the character of statutes see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume.)

PUBLICATION OF STATE STATUTES

But the great increase in the bulk of session laws and the remarkable change in their content are not the only features which distinguish the legislation of the State period from that of Territorial days. The style in which the legislative product is published is likewise of importance to the user of the statute books, whether he be lawyer or layman. Consequently, from time to time alterations have been made in the style and manner of publishing the session laws with a view to making the content more readily accessible.

The Secretary of State was responsible for the publication of the acts of the General Assembly of Iowa until 1915, when the work was assigned to the Supreme Court Reporter, who assumed the title of Code Editor. Within a short time after the adjournment of each General Assembly the laws, joint resolutions, and memorials have been compiled and printed, and paid for out of the State treasury. The laws of each session have been printed separately — until 1888 in the order of approval and since that date according to various methods of grouping. The laws of the Thirty-sixth General Assembly were published in the form of a supplemental supplement to the *Code of 1897*. Certain acts of each session which have been deemed of immediate importance have been first published in two newspapers of general circulation in the State. In 1851, 1860, 1873, and 1897 official codes were compiled which have served in some instances to determine the style of publication of sessional statutes. (For a more complete discussion of the style and publication of statute law in Iowa see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* and Mr. Clark's paper on *The Codification of Statute Law in Iowa* in this volume.)

DISTRIBUTION OF STATE STATUTES

The distribution and sale of statute laws has been subject to the regulation of legislative enactments. At the present time the act of 1909 is in force, which provides that the "secretary of state shall distribute the laws aforesaid as follows: To the state library for exchange purposes, one hundred fifty copies; to the law library of the state university for exchange purposes with the law libraries of other state and territorial universities or colleges, fifty copies; to the state historical department and the state historical society, each ten copies; to all judges of the supreme and district courts of Iowa and judges of the United States circuit and district courts in Iowa, one copy each; to the clerk of the supreme court of Iowa, to each clerk of the district court of Iowa, and to each clerk of the United States circuit and district courts in Iowa, one copy each for use in term time; to the state institutions and state officers, two copies each; to the separate departments of the principal state offices, members of permanent state boards or commissions, offices of permanent state boards or commissions when maintained at the seat of government, members of the thirty-fourth and succeeding general assemblies, chief clerk of the house, secretary of the senate, judges of the superior courts, colleges and public libraries within the state, state and territorial libraries in the United States, each one copy". Furthermore, each county officer, justice of the peace, township clerk, and mayor is entitled to one copy, while the county auditor makes application to the Secretary of State for the number of copies needed for sale and gratuitous distribution. Board-bound copies are sold for fifty cents a copy and sheep-bound copies for one dollar. The proceeds are paid into the State treasury.¹⁷⁰

NOTES AND REFERENCES

¹ *Organic Act of the Territory of Iowa*, Sec. 4; *House Journal*, 1840–1841, p. 3; *House Rules*, 1839–1840, No. 37, 1843–1844, Nos. 34, 39.

² *Laws of Wisconsin*, 1837–1838, pp. 239–244; Parish's *Robert Lucas*, pp. 167, 168, 169; Shambaugh's *Executive Journal of Iowa, 1838–1841*, p. 14.

William B. Conway, Secretary of the Territory, who had arrived in Iowa before Governor Lucas and had assumed the duties of Acting Governor, prepared a proclamation for the purpose of effecting a districting of the Territory and the apportionment of members of the Legislative Assembly. The proclamation prepared by Mr. Conway was handed to Governor Lucas as soon as he arrived, and served as the basis for the one issued.—Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 206–208.

³ Shambaugh's *Executive Journal of Iowa, 1838–1841*, pp. 14, 15; *Iowa Historical and Comparative Census, 1836–1880*, pp. 196, 198. For maps and tables of Assembly districting see *The Iowa Journal of History and Politics*, Vol. II, pp. 520–603.

⁴ Members of the Council were elected for a term of two years, so that it was not necessary to reapportion them in the act of the First Legislative Assembly.—*Organic Act of the Territory of Iowa*, Sec. 4.

⁵ *Laws of Iowa, 1838–1839*, p. 324; *Iowa Historical and Comparative Census, 1836–1880*, pp. 196, 198.

⁶ *Laws of Iowa, 1840*, p. 22; *Iowa Historical and Comparative Census, 1836–1880*, pp. 196, 198.

⁷ *Laws of Iowa, 1841–1842*, p. 38.

A previous attempt to subdivide the ninth district was made in the Third Legislative Assembly (1840–1841), but on account of the small population of Clinton County, which would have caused injustice to Scott County, the proposition failed.—*House Journal*, 1840–1841, p. 220.

⁸ Van der Zee's *Data on the Territorial Officers of Iowa*, in the possession of The State Historical Society of Iowa.

⁹ The wording of the statute was so ambiguous that it might have been construed to mean the election either of two members of the Council from each of the two counties or two from the whole district. Neither interpretation would have been correct because the district was entitled to only one member of the Council.—*Laws of Iowa, 1840*, p. 22.

¹⁰ *Laws of Iowa*, 1843-1844, p. 20; *Council Journal*, 1840-1841, p. 3, 1842-1843, p. 3.

¹¹ *Laws of Iowa*, 1843-1844, p. 48, 1844, p. 2; *Iowa Historical and Comparative Census, 1836-1880*, pp. 196, 198.

¹² This law served as the basis for the election of members to the Legislative Assembly in August, 1846; but the persons thus chosen never held a session because Iowa became a State that fall. The members of the First General Assembly of the State were elected according to the apportionment outlined in the Constitution of 1846.—*The Iowa Standard* (Iowa City), August 12, October 28, 1846.

¹³ *Laws of Iowa*, 1845-1846, pp. 30, 31.

¹⁴ *Organic Act of the Territory of Iowa*, Secs. 4, 5; *Laws of Iowa*, 1838-1839, p. 188.

Special qualifications for electors were provided in the case of those eligible to vote for delegates to the Constitutional Convention of 1844, but they in no way affected the qualifications of members of the Legislative Assembly.—*Laws of Iowa*, 1844, p. 3.

¹⁵ Data compiled by John M. Piffner, in possession of The State Historical Society of Iowa.

¹⁶ *Organic Act of the Territory of Iowa*, Sec. 8.

¹⁷ *Organic Act of the Territory of Iowa*, Sec. 4; Shambaugh's *Executive Journal of Iowa, 1838-1841*, p. 15.

¹⁸ *Laws of Iowa*, 1838-1839, pp. 185, 187, 1839-1840, p. 75; *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 245; *Laws of Iowa*, 1843-1844, pp. 1, 2, 1844, pp. 1, 2, 1845, p. 34, 1845-1846, p. 15; *Iowa Capitol Reporter* (Iowa City), August 13, 1845.

During the Territorial period the polls at general elections opened at nine o'clock in the morning and closed at six in the afternoon, unless the judges of election should deem it necessary to postpone the closing of the polls until nine o'clock in the evening. Secret voting by ballot was required.

¹⁹ *Laws of Iowa*, 1838-1839, pp. 185, 187, 188, 196.

²⁰ *Laws of Iowa*, 1838-1839, p. 190; *Organic Act of the Territory of Iowa*, Sec. 4.

²¹ *Laws of Iowa*, 1838-1839, p. 190; Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 212-215; *House Journal*, 1838-1839, p. 14.

²² *Laws of Iowa*, 1838-1839, pp. 192, 195.

²³ *Council Journal*, 1841-1842, p. 3; *House Journal*, 1838-1839, pp. 20,

32, 33, 1845, p. 98; *Iowa Capitol Reporter* (Iowa City), January 28, 1846; *The Iowa Standard* (Iowa City), August 12, 1846.

²⁴ *Laws of Iowa*, 1838-1839, pp. 192, 193.

²⁵ *House Journal*, 1838-1839, pp. 19, 31, 32, 33, 39, 298-301.

²⁶ *Council Journal*, 1845, pp. 4, 5, 8, 9, 12, 13, 21.

²⁷ *Organic Act of the Territory of Iowa*, Sec. 4; *Laws of Iowa*, 1843-1844, p. 2; *House Journal*, 1845, pp. 64, 65.

²⁸ *Laws of Iowa*, 1844, pp. 1, 2; *House Journal*, 1845, pp. 64, 65; *Iowa Capitol Reporter* (Iowa City), July 2, August 13, 1845.

²⁹ Shambaugh's *Executive Journal of Iowa, 1838-1841*, p. 15; *Laws of Iowa*, 1838-1839, p. 185, 1839-1840, p. 75; *Revised Statutes of the Territory of Iowa, 1842-1843*, p. 245; *Laws of Iowa*, 1843-1844, p. 1, 1844, pp. 1, 2, 1845, p. 34, 1845-1846, p. 15.

³⁰ *Organic Act of the Territory of Iowa*, Sec. 11; *House Journal*, 1838-1839, pp. 4, 16, 18, 21, 1839-1840, p. 3, 1845-1846, p. 4.

³¹ *Organic Act of the Territory of Iowa*, Sec. 11; *Laws of Iowa*, 1839-1840, pp. 141, 142, 1840, p. 50, 1840-1841, p. 109, 1841-1842, p. 116, 1842-1843, p. 92, 1843-1844, p. 61, 1845, pp. 51, 52, 1845-1846, p. 35; *House Journal*, 1841-1842, p. 210; *Council Journal*, 1845-1846, p. 64.

The Seventh Legislative Assembly authorized the Secretary of the Territory to pay the widow of a deceased member the full amount of the salary and mileage he would otherwise have been entitled to receive for the session.—*Laws of Iowa*, 1845, p. 111.

³² *House Journal*, 1838-1839, pp. 31, 39, 70, 71, 271.

³³ A resolution was also passed asking Congress for an additional appropriation of \$14,000, but Governor Lucas failed to sign it.—*Laws of Iowa*, 1839-1840, p. 152.

³⁴ *Laws of Iowa*, 1839-1840, pp. 151, 152, 1841-1842, p. 123, 1845, p. 111.

³⁵ *Laws of Iowa*, 1839-1840, p. 156, 1843-1844, p. 169; *United States Statutes at Large*, Vol. V, p. 657.

The bill providing for the extra session of 1840 became a law without the Governor's approval.—*Laws of Iowa*, 1839-1840, p. 75.

³⁶ *Council Journal*, 1838-1839, p. 28, 1840, p. 16; *House Journal*, 1840-1841, pp. 8, 9; *The Iowa Journal of History and Politics*, Vol. VIII, pp. 211-228.

³⁷ This law went into effect on November 25, 1839, without the signature of the Governor.—*Laws of Iowa*, 1839-1840, pp. 4, 5.

³⁸ *Laws of Iowa*, 1838-1839, p. 192.

³⁹ *Council Journal*, 1838-1839, pp. 15, 24, 1840, p. 4; *House Journal*, 1838-1839, pp. 20, 22, 1845-1846, pp. 7, 53, 60.

⁴⁰ *Laws of Iowa*, 1839-1840, pp. 4, 5; *Council Journal*, 1838-1839, p. 50, 1839-1840, p. 37; *House Journal*, 1838-1839, p. 189, 1841-1842, pp. 57, 67, 1845-1846, pp. 179, 193, 209; *House Rules*, 1839-1840, Nos. 40, 41.

⁴¹ *Organic Act of the Territory of Iowa*, Sec. 18; Parish's *Robert Lucas*, p. 178; *Council Journal*, 1840-1841, p. 18, 1842-1843, p. 213.

⁴² *Laws of Iowa*, 1840, p. 54, 1845, p. 107, 1845-1846, p. 125; *Council Journal*, 1838-1839, pp. 41, 126, 1840-1841, pp. 9, 40; *House Journal*, 1838-1839, pp. 37, 108, 1845-1846, p. 128.

⁴³ *Council Journal*, 1839-1840, p. 30, 1845-1846, p. 19; *House Journal*, 1838-1839, p. 24, 1841-1842, pp. 80, 101.

⁴⁴ The only instance of a session being referred to as "special" was the one in 1840. The journals employ the term special, while the law authorizing that session designated it both as extra and special.—*Council Journal*, 1840, p. 1; *House Journal*, 1840, p. 1; *Laws of Iowa*, 1839-1840, p. 75.

⁴⁵ *Organic Act of the Territory of Iowa*, Sec. 4; *Laws of Iowa*, 1838-1839, p. 325, 1839-1840, p. 75, 1843-1844, p. 48; *United States Statutes at Large*, Vol. V, p. 657.

⁴⁶ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 215; *Laws of Iowa*, 1838-1839, p. 325, 1839-1840, p. 75, 1840-1841, p. 41, 1843-1844, p. 48, 1844, pp. i, 1, 2.

⁴⁷ Once during the session of the Second Legislative Assembly a motion to adjourn so that members could go to war with Missouri was entertained.—*House Journal*, 1839-1840, p. 104.

⁴⁸ *Organic Act of the Territory of Iowa*, Sec. 4; *Council Journal*, 1845-1846, p. 72.

⁴⁹ *Council Journal*, 1840-1841, pp. 207, 208, 1845, p. 26; *House Journal*, 1845-1846, p. 160.

⁵⁰ *House Journal*, 1838-1839, pp. 4, 19, 84, 227, 235, 1839-1840, p. 204; *Laws of Iowa*, 1838-1839, p. 196.

⁵¹ *Council Journal*, 1843-1844, p. 204.

⁵² *House Journal*, 1845, pp. 5, 9, 1845-1846, p. 4.

⁵³ *House Journal*, 1839-1840, p. 4; *Laws of Iowa*, 1839-1840, pp. 88, 89, 1843-1844, p. 58.

⁵⁴ *Council Journal*, 1838-1839, p. 3, 1845, p. 11, 1845-1846, p. 8; *House Journal*, 1838-1839, p. 3, 1840-1841, p. 243.

⁵⁵ *Council Journal*, 1838-1839, p. 15.

⁵⁶ *Council Journal*, 1842-1843, pp. 4, 5, 1843-1844, pp. 4, 11-16, 65.

⁵⁷ *Annals of Iowa*, Vol. III, p. 449; *Iowa Capitol Reporter* (Iowa City), December 18, 1841; Van der Zee's *Data on Territorial Officers of Iowa*, in the possession of The State Historical Society of Iowa.

⁵⁸ *House Journal*, 1842-1843, pp. 7, 8.

⁵⁹ *House Journal*, 1841-1842, p. 4, 1842-1843, p. 7, 1845-1846, p. 7.

⁶⁰ *Council Journal*, 1839-1840, pp. 14, 29.

⁶¹ *Laws of Iowa*, 1838-1839, p. 196, 1839-1840, pp. 5, 9, 88, 89, 1841-1842, p. 80, 1843-1844, p. 58; *Council Journal*, 1842-1843, p. 12; *House Rules*, 1838-1839, Nos. 1, 29.

A statute enacted during the session of 1841-1842 provided that the assistant secretary and the assistant clerk should be appointed by the chief recording officers of the respective houses, and that the sergeants-at-arms should appoint the firemen and messengers. This law, however, was obeyed only in the Council for one session. Furthermore, the standing rules of the Council after the Third Legislative Assembly declared that all officers except the president should be "appointed" rather than "appointed by ballot" as formerly. Neither the law nor the rule was observed to any noticeable extent.—*Laws of Iowa*, 1841-1842, p. 80; *Council Journal*, 1842-1843, p. 12; *Council Rules*, 1842-1843, No. 25.

⁶² *Council Journal*, 1838-1839, p. 102; *House Journal*, 1838-1839, pp. 41, 59; *Laws of Iowa*, 1839-1840, p. 88, 1841-1842, pp. 80, 81; *House Rules*, 1840-1841, Nos. 2, 7, 8, 9, 10, 1838-1839, Nos. 29, 30, 34.

After 1842 it was the duty of the sergeant-at-arms to perform the duties of doorkeeper, employ the messengers and firemen, and keep the chambers clean, but the statute became practically a dead letter.—*Laws of Iowa*, 1841-1842, p. 80.

Joseph T. Fales was chief clerk of the House of Representatives in the first, second, third, fourth, and sixth Legislative Assemblies and secretary of the Council in the fifth. He was doubtless the most familiar figure in the halls of the Territorial legislature.

⁶³ *Council Journal*, 1839-1840, p. 83, 1843-1844, p. 159; *House Journal*, 1838-1839, pp. 73, 75, 266, 283, 1842-1843, p. 138; *Laws of Iowa*, 1840-1841, p. 109, 1841-1842, pp. 80, 81, 116, 1842-1843, p. 92, 1845, p. 52.

⁶⁴ Data compiled by John M. Pfiffner, in possession of The State Historical Society of Iowa; *House Journal*, 1838-1839, p. 206.

⁶⁵ *Council Rules*, 1845-1846, Nos. 1, 11; *House Rules*, 1845-1846, Nos. 6, 38, 59.

⁶⁶ *Council Journal*, 1840, p. 81; *House Journal*, 1838-1839, p. 54.

⁶⁷ *Council Rules*, 1838-1839, Nos. 1, 16, 1839-1840, No. 15; *House Rules*, 1838-1839, Nos. 1, 10, 18, 1839-1840, Nos. 53-58.

⁶⁸ *Council Rules*, 1839-1840, No. 41.

⁶⁹ The Council rules of the First Legislative Assembly prescribed no regular order of business.

⁷⁰ *Council Rules*, 1839-1840, 1842-1843; *House Rules*, 1838-1839, 1843-1844.

⁷¹ *Council Journal*, 1838-1839, pp. 17, 19; *Council Rules*, 1839-1840, Nos. 12, 38, 1840-1841, No. 12; *House Rules*, 1838-1839, No. 15.

⁷² *Council Rules*, 1838-1839, No. 14; *House Rules*, 1838-1839, Nos. 16, 18, 1839-1840, Nos. 45, 52, 1840-1841, Nos. 42, 44, 45.

⁷³ *Council Rules*, 1838-1839, No. 19; *House Rules*, 1838-1839, No. 21, 1839-1840, No. 50.

⁷⁴ *Council Rules*, 1838-1839, No. 8; *House Rules*, 1838-1839, Nos. 7, 9, 10, 33, 1839-1840, No. 15; *House Journal*, 1839-1840, p. 137.

⁷⁵ *House Rules*, 1839-1840, Nos. 46, 49, 51; *Joint Rules*, 1838-1839, Nos. 14, 15, 1839-1840, No. 10.

⁷⁶ *Council Rules*, 1838-1839, Nos. 25, 26; *House Rules*, 1838-1839, Nos. 27, 28; *Joint Rules*, 1838-1839, Nos. 5, 6, 7, 8.

⁷⁷ *Organic Act of the Territory of Iowa*, Secs. 2, 4; *United States v. Fanning*, 1 Morris 348, at 350.

⁷⁸ *Organic Act of the Territory of Iowa*, Sec. 6; *Shambaugh's Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 76; *Herriott's Legislation in Iowa Prior to 1858* in the *Annals of Iowa* (Third Series), Vol. VI, pp. 516, 517; *House Journal*, 1839-1840, p. 26.

⁷⁹ *Organic Act of the Territory of Iowa*, Sec. 2; *United States Statutes at Large*, Vol. V, p. 356.

⁸⁰ *Herriott's Legislation in Iowa Prior to 1858* in the *Annals of Iowa* (Third Series), Vol. VI, pp. 504, 505, 507; *Swisher's The Executive Veto in Iowa Prior to 1902*, pp. 1-16. This is a manuscript in the possession of The State Historical Society of Iowa.

⁸¹ *Herriott's Legislation in Iowa Prior to 1858* in the *Annals of Iowa* (Third Series), Vol. VI, pp. 516-522.

⁸² *Organic Act of the Territory of Iowa*, Secs. 3, 11.

⁸³ *Laws of Iowa*, 1838-1839, pp. 321-324, 1839-1840, p. 152, 1840, p. 53, 1840-1841, pp. 113, 114, 1841-1842, p. 126, 1843-1844, p. 168, 1845, p. 109, 1845-1846, p. 130; *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 730.

⁸⁴ *Laws of Iowa*, 1839-1840, p. 152, 1840, p. 53, 1845, p. 110.

⁸⁵ *Laws of Iowa*, 1839-1840, pp. 157, 159, 1842-1843, p. 98, 1843-1844, p. 168.

⁸⁶ *Revised Statutes of the Territory of Iowa*, 1842-1843, pp. 498-500; *Laws of Iowa*, 1840-1841, p. 114, 1841-1842, p. 126.

⁸⁷ The district attorney was commissioned to forward copies of the memorials and resolutions of the First Legislative Assembly to the president of the Federal Senate, the speaker of the Federal House of Representatives, and the Territorial Delegate in Congress.—*Laws of Iowa*, 1839-1840, p. 149.

⁸⁸ The Second Legislative Assembly also made provision for the distribution of the *United States Statutes* among the Territorial officers.—*Laws of Iowa*, 1839-1840, p. 148.

⁸⁹ *Laws of Iowa*, 1838-1839, pp. 321-324, 1839-1840, p. 152, 1840, p. 53, 1840-1841, pp. 57, 114, 1841-1842, p. 126.

⁹⁰ *Revised Statutes of the Territory of Iowa*, 1842-1843, pp. 378, 379, 380; *Laws of Iowa*, 1843-1844, p. 166, 1844, p. 14, 1845, p. 113, 1845-1846, p. 132.

⁹¹ *Laws of Iowa*, 1839-1840, pp. 157, 158, 1841-1842, pp. 123, 124.

⁹² *Laws of Iowa*, 1840-1841, p. 114, 1845-1846, p. 130.

⁹³ *Constitution of Iowa*, 1846, Art. IV, Secs. 6, 31.

⁹⁴ *Constitution of Iowa*, 1846, Art. XIII, Sec. 7.

⁹⁵ *Laws of Iowa*, 1846-1847, pp. 23, 25, 1848-1849, pp. 153, 154.

⁹⁶ *Laws of Iowa*, 1850-1851, pp. 200-202.

⁹⁷ *Laws of Iowa*, 1852-1853, pp. 118, 121.

⁹⁸ *Laws of Iowa*, 1854-1855, pp. 203-208.

⁹⁹ *Laws of Iowa*, 1856-1857, pp. 170-174.

¹⁰⁰ *Constitution of Iowa*, 1846, Art. IV, Sec. 32; *Constitution of Iowa*, 1857, Art. III, Secs. 6, 33, 34, 35, 36, 37.

While the Constitution definitely limits the number of Senators to over one-third and under one-half of the number of Representatives there were

in the Tenth General Assembly (1864) forty-six Senators and ninety Representatives.— *Laws of Iowa*, 1862, pp. 118–121, 199–203.

¹⁰¹ *Laws of Iowa*, 1858, pp. 121–124, 241–245.

¹⁰² Shambaugh's *Assembly Districting and Apportionment in Iowa in The Iowa Journal of History and Politics*, Vol. II, pp. 542–603.

Senator Farr introduced into the last legislature (1915) a constitutional amendment proposing a radical change in the number of members of the General Assembly and their apportionment. In 1919 the State was to be divided into between twenty-five and thirty-three senatorial districts, each being represented by one Senator. The Representatives, not to exceed sixty-nine in number, were to be chosen from the senatorial districts also. Two were to be elected from each senatorial district and the extra members, if there were any — there could never be more than two and one-half times as many as senatorial districts — were to be apportioned, one each among the districts having the largest population and composed of more than one county. The resolution was indefinitely postponed.— *Senate Journal*, 1915, pp. 521, 1121, 1122.

¹⁰³ *Constitution of Iowa*, 1846, Art. IV, Secs. 4, 5; *Constitution of Iowa*, 1857, Art. III, Secs. 4, 5.

¹⁰⁴ Data compiled by John M. Piffner, in the possession of The State Historical Society of Iowa.

¹⁰⁵ *Constitution of Iowa*, 1846, Art. IV, Secs. 21, 22, 23; *Constitution of Iowa*, 1857, Art. III, Secs. 21, 22, 23; *Senate Journal*, 1848, p. 35.

¹⁰⁶ *Senate Journal*, 1848, pp. 7, 39–50.

¹⁰⁷ *Constitution of Iowa*, 1846, Art. IV, Sec. 1; *Senate Journal*, 1848, pp. 13, 14, 25, 26, 34–37, 56, 57, 70.

¹⁰⁸ *Senate Journal*, 1862, pp. 50–54.

One of the Senators-elect, Mr. J. L. Dana, did not, however, obtain the vacant seat on account of defective credentials.— *Senate Journal*, 1862, pp. 52, 161.

¹⁰⁹ *Senate Journal*, 1874, p. 120.

¹¹⁰ *House Journal*, 1884, pp. 241, 274, 275, 317–319, 324.

¹¹¹ *Constitution of Iowa*, 1846, Art. III, Sec. 6, Art. IV, Secs. 3, 5, Art. XIII, Sec. 6; *Constitution of Iowa*, 1857, Art. II, Sec. 6, Art. III, Secs. 3, 5, Art. XII, Sec. 6; Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 358–360.

¹¹² *Constitution of Iowa*, 1846, Art. IV, Sec. 13; *Constitution of Iowa*, 1857, Art. III, Sec. 12, Art. XI, Sec. 6; Shambaugh's *Messages and Procla-*

mations of the Governors of Iowa, Vol. II, p. 207, Vol. VI, p. 244; *Iowa Official Register*, 1915-1916, pp. 51, 88; *Code of 1851*, Secs. 429, 435, 443; *Laws of Iowa*, 1858, pp. 403, 404, 410.

¹¹³ *Senate Journal*, 1915, pp. 4, 5; *House Journal*, 1915, pp. 15-17.

¹¹⁴ *Constitution of Iowa*, 1846, Art. IV, Sec. 8; *Constitution of Iowa*, 1857, Art. III, Sec. 7; *Code of 1897*, Secs. 1233-1238.

¹¹⁵ *Constitution of Iowa*, 1846, Art. IV, Secs. 3, 5, 6; *Constitution of Iowa*, 1857, Art. III, Secs. 3, 5, 6, Art. XII, Secs. 6, 10, 16; *Laws of Iowa*, 1906, p. 27.

During the session of the General Assembly in 1915 a joint resolution was introduced in the House of Representatives which proposed that the term of Representatives be made four years. The resolution failed of adoption by a vote of forty-three to fifty-seven.—*House Journal*, 1915, pp. 202, 517.

¹¹⁶ *Constitution of Iowa*, 1846, Art. IV, Sec. 30; *Constitution of Iowa*, 1857, Art. III, Sec. 32.

¹¹⁷ *Constitution of Iowa*, 1846, Art. IV, Sec. 25; *Laws of Iowa*, 1848, p. 44.

¹¹⁸ *Constitution of Iowa*, 1857, Art. III, Sec. 25; *Laws of Iowa*, 1858, p. 52, 1868, p. 215, 1872 (General), p. 121, 1880, p. 33, 1911, p. 1, 1913, p. 4.

If a member's term covers less than fifteen days he is entitled to \$300; if between fifteen and thirty-one days, \$500; and if between thirty and fifty-one days, \$700.—*Laws of Iowa*, 1913, p. 4.

¹¹⁹ *Constitution of Iowa*, 1857, Art. III, Sec. 25; *Laws of Iowa*, 1874 (General), pp. 4, 5, 1880, p. 33.

No mileage was allowed members of the adjourned session of 1873.—*Laws of Iowa*, 1872 (Local), p. 130.

¹²⁰ *Laws of Iowa*, 1868, p. 215; *Iowa Official Register*, 1907-1908, p. 188.

¹²¹ *Constitution of Iowa*, 1846, Art. IV, Secs. 10, 11, 12; *Constitution of Iowa*, 1857, Art. III, Secs. 9, 10, 11; *Code of 1897*, Secs. 11, 2859, 3541.

¹²² At another time an adjourned session was threatened, a motion to adjourn the General Assembly until June on account of an epidemic of smallpox in Des Moines being entertained.—*House Journal*, 1902, p. 332.

¹²³ *Constitution of Iowa*, 1846, Art. IV, Sec. 2, Art. XIII, Sec. 8; *Constitution of Iowa*, 1857, Art. III, Sec. 2.

¹²⁴ *Constitution of Iowa*, 1846, Art. IV, Sec. 2, Art. V, Sec. 9; *Constitution of Iowa*, 1857, Art. III, Sec. 2, Art. IV, Sec. 11; *Laws of Iowa*, 1872 (Local), p. 130.

¹²⁵ These figures are inclusive of every day from the date of convening to adjournment *sine die*.

As in other legislative bodies, the General Assembly of Iowa has at times spent a great many hours at business which seems through the perspective of years to have been immaterial. Deadlocks have existed for weeks; political parties have delayed action; and useless measures have been debated at great length. On the whole, however, Iowa legislators seem to have been fairly conscientious, as witness the following sentiment:

“Whereas we met to legislate
For all the people of this State;
And before we came we full well knew,
That there was work for us to do.
And whereas we have fooled away
Our precious time from day to day,
This House resolves to fool no longer,
And to make this resolution stronger,
We ask the Senate to concur;
To this we hope they won't demur.”

— *House Journal*, 1848–1849, pp. 219, 220.

¹²⁶ *Constitution of Iowa*, 1846, Art. IV, Secs. 10, 15; *Constitution of Iowa*, 1857, Art. III, Secs. 9, 14.

¹²⁷ *Laws of Iowa*, 1872 (Local), p. 130.

¹²⁸ *House Journal*, 1846–1847, pp. 183, 421; *Senate Journal*, 1848–1849, pp. 44, 97, 251; *Constitution of Iowa*, 1846, Art. V, Sec. 11; *Constitution of Iowa*, 1857, Art. IV, Sec. 13.

¹²⁹ The Senate on the last day of the session in 1856 held as many as five sessions.— *Senate Journal*, 1856, pp. 85, 90, 91, 95.

¹³⁰ *House Rules*, 1846–1847, No. 40; *Senate Rules*, 1909, No. 41.

¹³¹ *Senate Journal*, 1846–1847, pp. 61, 67, 69, 1848, pp. 69, 83, 1848–1849, p. 181.

¹³² *House Journal*, 1854–1855, p. 188, 1870, p. 91, 1888, p. 367, 1907, p. 1481; *Senate Journal*, 1846–1847, p. 61, 1854–1855, pp. 45, 261; *Code of 1897*, Sec. 28.

¹³³ *Code of 1897*, Sec. 23; *House Journal*, 1876, p. 24, 1878, p. 24, 1880, p. 25, 1882, p. 20.

¹³⁴ *Code of 1897*, Secs. 23, 24, 25.

The First General Assembly was an exception to the general rules for the organization of joint conventions. The speaker presided, and tellers were appointed by him as president of the meeting. The Senate, however, consid-

ered itself insulted by his assumption of authority.—*Senate Journal*, 1846–1847, p. 61; *House Journal*, 1846–1847, pp. 30, 95.

¹³⁵ *Senate Journal*, 1848–1849, p. 29, 1854–1855, p. 44; *House Journal*, 1884, p. 51, 1890, pp. 169, 286; *Code of 1897*, Secs. 26, 27, 29; *Constitution of Iowa*, 1846, Art. IV, Sec. 33; *Constitution of Iowa*, 1857, Art. III, Sec. 38.

¹³⁶ *Beard's American Government and Politics*, p. 241; *House Journal*, 1870, pp. 90, 91, 1911, pp. 183, 1925.

¹³⁷ *Constitution of Iowa*, 1846, Art. IV, Sec. 14; *Constitution of Iowa*, 1857, Art. III, Sec. 13.

All executive nominations are considered in executive sessions of the Senate, although not all are made by the Governor. The Railroad Commissioners nominate the Commerce Counsel.—*Laws of Iowa*, 1911, p. 93.

¹³⁸ *Laws of Iowa*, 1898, p. 63, 1909, p. 167, 1911, p. 93, 1913, pp. 26, 152.

¹³⁹ *House Journal*, 1913, pp. 385, 520.

¹⁴⁰ *Constitution of Iowa*, 1846, Art. IV, Sec. 9; *Constitution of Iowa*, 1857, Art. III, Sec. 8; *House Rules*, 1846–1847, Nos. 34, 39, 1852–1853, No. 39, 1854–1855, No. 39, 1858, No. 39, 1864, No. 40, 1915, Nos. 35, 40; *House Journal*, 1862, p. 52.

¹⁴¹ Inasmuch as there was no Lieutenant Governor under the Constitution of 1846 the Senate was called to order in the same manner as the House of Representatives. While the law allows any Representative elect to call the House to order custom has, since 1860, accorded that privilege to the senior member from Polk County.—*Code of 1851*, Sec. 5; *House Journal*, 1860, p. 3, 1915, p. 1.

¹⁴² The *Code of 1851* contained the clause that the credentials committee should be selected by ballot or *viva voce*. This provision was omitted in the *Code of 1873*. It is now customary for the presiding officer to appoint the committee on credentials.—*Code of 1851*, Sec. 7; *Code of 1873*, Sec. 8; *Senate Journal*, 1915, p. 2; *House Journal*, 1915, p. 3.

¹⁴³ *Code of 1851*, Sec. 5; *Code of 1897*, Secs. 6–9; *Laws of Iowa*, 1858, p. 248, 1894, p. 102.

¹⁴⁴ *House Journal*, 1846–1847, pp. 4–7, 1856, pp. 4, 5, 1915, pp. 1, 2, 8–11; *Senate Journal*, 1846–1847, pp. 3–6, 1915, pp. 1, 2, 5, 6.

¹⁴⁵ *House Journal*, 1890, pp. 1–26.

¹⁴⁶ *Code of 1897*, Sec. 9; *House Journal*, 1874, pp. 8–48, 1890, pp. 30–83; *Senate Journal*, 1892, pp. 8–14.

¹⁴⁷ *Code of 1897*, Sec. 13; *Iowa Official Register*, 1915–1916, p. 137; *Senate Journal*, 1868, pp. 55, 56, 1870, p. 67, 1872, p. 141.

¹⁴⁸ *House Journal*, 1846-1847, p. 6, 1856-1857, pp. 5-8; *Senate Journal*, 1846-1847, p. 6, 1856-1857, pp. 7-10, 14, 29.

The House of Representatives invited the clergymen of the capital city to officiate as chaplains, and to arrange among themselves the order in which they would serve. In the Senate and sometimes in the House of Representatives one minister was employed for the whole session. But for many years ministers of all creeds and denominations from all parts of the State have been invited to open the daily sessions of the House and Senate with prayer.

¹⁴⁹ *Senate Journal*, 1873, p. 345.

¹⁵⁰ The method of electing officers by voting for the whole number at one time was instituted as early as 1861 in the House of Representatives.— *House Journal*, 1861, p. 6.

¹⁵¹ "Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office." — *Constitution of Iowa*, 1857, Art. XI, Sec. 5.

¹⁵² *Laws of Iowa*, 1858, p. 248; *Cliff v. Parsons*, 90 Iowa 665 at 673; *Senate Rules*, 1915, No. 3; *Senate Journal*, 1906, p. 1102.

¹⁵³ *House Rules*, 1890, No. 63; *Senate Rules*, 1886, No. 38; *Laws of Iowa*, 1888, pp. 118, 119.

¹⁵⁴ *House Journal*, 1846-1847, pp. 400, 404, 405, 406, 1856-1857, pp. 524, 525, 563; *Senate Journal*, 1846-1847, pp. 281, 286, 1850-1851, p. 266, 1852-1853, p. 255.

¹⁵⁵ *House Journal*, 1860, p. 65, 1866, pp. 465, 466, 1870, pp. 547, 548; *Senate Journal*, 1866, pp. 402, 411, 412, 1870, p. 394.

¹⁵⁶ *Laws of Iowa*, 1872 (General), pp. 121, 122, 1880, p. 34, 1882, p. 53, 1894, p. 77; *Code of 1897*, Sec. 13; *House Rules*, 1909, No. 69.

¹⁵⁷ The data concerning committees was taken from statistics compiled by Professor F. E. Horack and Mr. John M. Piffner, and is in the possession of The State Historical Society of Iowa.

¹⁵⁸ The committee on agriculture was composed of forty-three members in 1909. Half of the Senators were on the railroads committee in 1913.

¹⁵⁹ *House Journal*, 1911, p. 13.

¹⁶⁰ *Senate Rules*, 1880, No. 27, 1915, Nos. 29, 30; *House Rules*, 1915, Nos. 65, 66; *Senate Journal*, 1915, p. 8; *House Journal*, 1882, pp. 27, 63, 64, 96, 1896, pp. 64, 65, 79, 1906, p. 50, 1909, p. 14, 1915, p. 14.

¹⁶¹ *House Journal*, 1873, p. 217.

¹⁶² As was previously noted daily sessions are customarily opened with prayer in both branches of the General Assembly, after which the journal for the preceding day is read.

The House rules have always designated that the reading of the journal should be the first order of daily business. The same was true of the standing rules of the Senate until 1890, when the reading of the journal was omitted from the order of daily business and the following directions included in the duties of the president:

"Immediately preceding the adjournment of each morning session, or, in case it cannot be done during that session, then as soon after the convening of the next following session as he may find most convenient, the President shall call for corrections of the journal of the last day's proceedings. He shall then cause any mistakes therein to be corrected by the Secretary, and the journal shall then be approved."—*Senate Rules*, 1890, No. 1.

¹⁶³ *Code of 1897*, Secs. 32, 33, 34; *Constitution of Iowa*, 1846, Art. IV, Sec. 17; *Constitution of Iowa*, 1857, Art. III, Sec. 16.

¹⁶⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 42, 43, 45; *Laws of Iowa*, 1858, pp. 125-152, 215-234; Brindley's *History of Taxation in Iowa*, Vol. I, pp. 46, 48, 49.

¹⁶⁵ Haynes's *Third Party Movements Since the Civil War*, pp. 438-446; Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 17, 18, 73-76, 92-106, 171-178.

¹⁶⁶ Haynes's *Third Party Movements Since the Civil War*, pp. 449, 450, 453; *Inaugural Address* in the *Iowa Legislative Documents*, 1902, Vol. I, pp. 5, 6, 15-17, 1907, Vol. I, pp. 11-13; *Biennial Message* in the *Iowa Legislative Documents*, 1904, Vol. I, pp. 15, 16, 1906, Vol. I, pp. 11-16, 1907, Vol. I, pp. 24, 25, 26-34.

¹⁶⁷ This is also in accord with the practice of thirteen other States, although thirty-two prefer to class the veto as executive in character. One State has no executive veto, while in Rhode Island it appears as an amendment to the Constitution.—Dealey's *Growth of American State Constitutions*, p. 164.

¹⁶⁸ *Constitution of Iowa*, 1846, Art. IV, Sec. 17; *Constitution of Iowa*, 1857, Art. III, Sec. 16.

¹⁶⁹ Swisher's *The Executive Veto in Iowa Prior to 1902*, pp. 37, 39-43. This is a manuscript in the possession of The State Historical Society of Iowa.

¹⁷⁰ *Supplement of the Code of Iowa*, 1913, Secs. 42-44.

**LAW-MAKING POWERS OF THE
LEGISLATURE IN IOWA
BY
BENJ. F. SHAMBAUGH**

I

INTRODUCTION

SINCE American legislatures derive their authority from written constitutions, the determination of statute-making power in the United States is a problem of constitutional law.¹ Indeed, were it not for the existence of written constitutions having the force of supreme law, the consideration of the powers of the legislature in Iowa could be dismissed with the simple statement that this legislature, like the British Parliament,² is omnipotent. But under the American system of written constitutions the subject of legislative authority must be resolved largely into a discussion of constitutional limitations.³ Nor is it possible to designate the sphere of legislative authority except by pointing out the several respects in which that authority is limited: in the very nature of the case a specific enumeration of the law-making powers which a State legislature may exercise is impracticable. Even the consideration of limitations must in certain respects fall short of detailed enumeration.

While the question of legislative power is largely a problem of constitutional law, it is true that the source, the extent, and the nature of such authority are discovered in statute books and in court reports as well as in written constitutions. Accordingly, a study of the law-making powers of the legislature in Iowa involves, among other requirements, an examination of the Constitution of the United States, the Organic Law of 1838, the Con-

stitution of 1846, the Constitution of 1857, the reports of the Supreme Court of the United States and of the Supreme Court of Iowa, the acts of Congress, and the statute laws and codes of Iowa.⁴

To obtain a general notion of the nature and extent of the law-making power of the Legislative Assembly of the Territory of Iowa one has but to read the chapter titles of statutes as listed in the "Table of Contents" of the *Revised Statutes of 1842-1843*. A good idea of the content of legislative authority as exercised by the General Assembly of the State may be gathered from the "Analysis of the Code by Titles and Chapters" which is given in the early pages of the *Code of 1897*, or from the "Analysis of the Code and Supplement" as printed in the *Supplement to the Code of Iowa, 1913*. Here, at a glance, the reader sees the whole field of statute law as cultivated in this State. A closer view of these ponderous volumes reveals, in smaller type, the judicial interpretation and construction of the statute law by the courts.

On the other hand it may be said that commentaries or texts on constitutional law, more especially on constitutional limitations, contain for legislators the most satisfactory presentation of the principles upon which a State legislature exercises law-making authority, as well as the rule of decision upon which the courts have construed that authority. Nor is it difficult to indicate a standard work on constitutional limitations which may be relied upon as a guide in the making of statute law: Cooley's *Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union*, now in its seventh edition, is unsurpassed as a clear and concise exposition of the principles

of legislative power. Persons interested in statute law-making, particularly members of State legislatures, will find the following chapters especially illuminating: Chapter III, on *The Formation and Amendment of State Constitutions*; Chapter IV, on *The Construction of State Constitutions*; Chapter V, on *The Powers which the Legislative Department May Exercise*; Chapter VI, on *The Enactment of Laws*; and Chapter VII, on *The Circumstances under which a Legislative Act May be Declared Unconstitutional*.

In any consideration of the statute-making powers of the legislature in Iowa it is important at the outset to distinguish between the legislature of the Territory and the legislature of the State. The legislature of the Territory consisted of two houses, the Council and the House of Representatives, and was known as the Legislative Assembly; while the legislature of the State from 1846 to this day has consisted of a Senate and a House of Representatives and is called the General Assembly. In the matter of organization these two law-making agencies are very much alike; but in the nature, extent, and constitutional basis of their authority they have little in common.

II

LAW-MAKING POWERS OF THE LEGISLATIVE ASSEMBLY

THE status of a Territorial legislature in the United States is that of a subordinate law-making agency⁵—a position that results from the very nature of Territorial government. Indeed, when the constitutional status of Territorial government is explained the position and powers of the legislature can not be misunderstood.

In the first place the government of an organized Territory in the United States does not rest upon the consent of the governed. The people of the Territory are not consulted as to the form of their political organization: they have no hand in its establishment. The Organic Law is not a primary expression of the will of the people of the Territory: it is an act of Congress, and expresses only indirectly the will of the people of the States as represented in Congress. Territorial government rests directly upon the authority of Congress.⁶

With the possible exception of an absolute control over the civil rights of the inhabitants, Congress has plenary power in legislating for a Territory. In fact, ever “since the time when the necessity for the exercise of the authority arose, there has been almost no question as to the absolute power of Congress to determine the form of political and administrative control to be erected over the Territories, and to fix the extent to which their inhabitants shall be admitted to a participation in their own government.”⁷ Thus the extent and distri-

bution of power in a Territorial government is determined absolutely by Congress through the enactment of a statute which is known variously as the "Organic Law", the "Fundamental Law", or the "Constitution" of the Territory.⁸

It was by the act of Congress of June 12, 1838, that the Iowa country was erected into an "organized" Territory with the most advanced type of Territorial government. From 1838 to 1846 this act constituted the Organic Law of the Territory: its provisions were the measure of all political power in both general and local affairs. It was the instrument by which legislative, executive, and judicial authority was delegated to departments or vested in officers.⁹ Thus it is apparent that the government of the Territory of Iowa was in fact not a constitutional but rather a legislative government subject to alteration at any time by congressional legislation.¹⁰ The powers of this government were clearly delegated, resting for their authority solely upon an act of Congress.

From the very nature of Territorial government as above described it follows that the extent of the law-making power of the Legislative Assembly of the Territory of Iowa was determined by Congress. More than this, Congress could abrogate acts of the Legislative Assembly and itself legislate directly for the people of the Territory. It could "make a void act of the territorial legislature valid, and a valid act void"¹¹ since the Organic Law provided that "all the laws of the Governor and Legislative Assembly shall be submitted to, and if disapproved by, the Congress of the United States, the same shall be null and of no effect."¹²

There are two clauses in the Organic Law which relate specifically to the delegation and extent of legislative au-

Art. 2d. The inhabitants of the said territory, shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unlawful punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or engagements, *bona fide*, and without fraud previously formed.

Art. 6th. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted.

III

LAW-MAKING POWERS OF THE GENERAL ASSEMBLY

THE General Assembly of Iowa was first organized under the Constitution of 1846: it was continued with the same name and with substantially the same powers under the Constitution of 1857. And so, for present purposes it will be unnecessary to consider this law-making body historically by constitutional periods. In this paper it will be sufficient to indicate in general the constitutional status of the State government and to discuss in particular the statute-making powers of the General Assembly under the present Constitution.

Fundamental principles of constitutional law relative to the status of State government have come to be fairly well defined and generally recognized. Thus it is well understood that State government is constitutional government; that it must be republican in form; that its general principles are codified in a written instrument; that it emanates from the people and has only such authority as is granted by the sovereign people; that it is a government of general powers which are granted in general terms; that its general grant of power is limited expressly and impliedly by provisions of the Federal Constitution and by provisions of the State Constitution; that in construing the powers of a State government the courts will follow the rule that what is not denied either by express provision or by implication is granted. From these principles of constitutional law it follows that the

authority of any branch of the State government consists of the general powers conferred upon that department by the State Constitution, subject to the limitations found in both the State and the Federal Constitution.

As to the historical origin of legislative authority it is well understood that the law-making powers of the British Parliament descended to the American State legislatures; but no law-making assembly in this country has ever claimed for itself the omnipotence of Parliament. State legislatures are not sovereign law-making bodies: deriving their authority from the people, they are distinctly limited in the extent and exercise of law-making power by written constitutions. The extent of their power is measured by the constitutional limitations imposed.

There are, says Cooley, two fundamental rules by which the extent of the legislative authority in the States may be measured, namely:

1. In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specifically defined legislative powers, but is intrusted with the general authority to make laws at discretion.

2. But the apportionment to this department of legislative power does not sanction the exercise of executive or judicial functions, except in those cases, warranted by parliamentary usage, where they are incidental, necessary, or proper to the exercise of legislative authority, or where the constitution itself, in specified cases, may expressly permit it. Executive power is so intimately connected with legislative, that it is not easy to draw

a line of separation; but the grant of the judicial power to the department created for the purpose of exercising it must be regarded as an exclusive grant, covering the whole power, subject only to the limitations which the constitutions impose, and to the incidental exceptions before referred to. While, therefore, the American legislatures may exercise the legislative powers which the Parliament of Great Britain wields, except as restrictions are imposed, they are at the same time excluded from other functions which may be, and sometimes habitually are, exercised by the Parliament.¹⁵

Judicial opinions concerning the nature, extent, and limitations of the statute law-making power of the State legislature are great in number: indeed, it would be difficult to estimate the volume of decisions, State and Federal, which deal in a practical way with this subject.¹⁶ At the same time the conclusions of the courts are for the most part clear and uniform. Thus it is well settled that, with the exception of certain powers delegated to Congress or denied to the States by the Federal Constitution, an absolute and uncontrolled law-making authority resides in the people of the States who may exercise it directly themselves or delegate its exercise wholly or in part to others; that for the exercise of legislative authority the people, through their State Constitutions, have created law-making assemblies or legislatures; that in delegating authority to the legislature the people commit to that body the whole of the law-making power of the State except what they expressly or impliedly withhold; that legislative power is granted to the State legislature in general terms, and that "a prohibition to exercise a particular power is an exception";¹⁷ that "plenary power in the legislature for all purposes of civil government is the rule";¹⁸ that the powers of a State legislature are

limited by express prohibitions in the Federal Constitution, by express prohibitions in the State Constitution, and by implied prohibitions in both the Federal and the State Constitution; and that "the frame of government; the grant of legislative power itself; the organization of the executive authority; the erection of the principal courts of justice, create implied limitations upon the law making authority as strong as though a negative was expressed in each instance."¹⁹

It is equally well settled that the legislative authority does not extend beyond the territorial limits of the State; that no legislature can enact irrepealable statutes; that "the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority";²⁰ that the creation of municipal corporations with power to make local regulations does not trench upon the maxim that legislative power can not be delegated; that "a statute may be *conditional*, and its taking effect may be made to depend upon some subsequent event";²¹ and that all laws should be made, taxes levied, and monies appropriated for public purposes. It is not so clear that the legislature may grant divorces or enact statutes empowering guardians and other trustees to sell lands — although such legislation has been held valid.

Nor can the legislature "exercise powers which are in their nature essentially judicial or executive", since these powers are confided to other departments of the State government. It is the business of the legislature to make laws or statutes which serve as rules of civil conduct: it is not within its province to construe and apply the law, or "to decide private disputes between or concerning persons". At the same time it is conceded that the legislature may properly enact declaratory statutes.

It is more difficult to distinguish "in particular cases, between what is properly legislative and what is properly executive duty. The authority that makes the laws has large discretion in determining the means through which they shall be executed; and the performance of many duties which they may provide for by law may refer either to the chief executive of the State, or, at their option, to any other executive or ministerial officer, or even to a person specially named for the duty. What can be definitely said on this subject is this: That such powers as are specially conferred by the constitution upon the governor, or upon any other specified officer, the legislature cannot require or authorize to be performed by any other officer or authority; and from those duties which the constitution requires of him he cannot be excused by law. But other powers or duties the executive cannot exercise or assume except by legislative authority, and the power which in its discretion it confers it may also in its discretion withhold, or confide to other hands.'"22

From the above principles of constitutional law or the law of constitutional limitations, it is not difficult to formulate a few general rules for the practical guidance of legislators and legislative draftsmen in their efforts to satisfy themselves that proposed legislation comes within the law-making powers of the legislature. *First*, they should satisfy themselves that the bill does not cover a subject of legislation which is denied to the State, either expressly or impliedly, by the Constitution of the United States. *Second*, they should satisfy themselves that the bill does not deal with matters which by express provision of the State Constitution or by implication have been placed beyond the reach of the legislature. *Third*, they should satisfy themselves that in enacting the proposed

legislation the legislature would not be overstepping the bounds of legislative authority by exercising power that properly belongs either to the executive or judicial department of the government.

Express provisions in the Federal Constitution limiting the law-making power of the State legislature are not numerous; nor are they found in a single article or section. Taken in the order in which they appear these provisions read as follows:

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.— Art. I, Sec. 10.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.— Art. I, Sec. 10.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.— Art. I, Sec. 10.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.— Art. IV, Sec. 1.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.— Art. IV, Sec. 2.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.— Art. IV, Sec. 2.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.— Art. VI.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.— Amendment, Art. XIII, Sec. 1.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.— Amendment, Art. XIV, Sec. 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.— Amendment, Art. XV, Sec. 1.

The implied limitations on State legislative authority found in the Constitution of the United States are contained in those provisions which delegate power to the government of the United States — particularly of course in the provisions of section eight of the first article wherein the powers of Congress are enumerated. That is to say, every delegation of power of a legislative character to the government of the United States is by implication a limitation upon the law-making authority of the State.

Having discussed the expressed and implied limitations on State legislative authority found in the Constitution of the United States, it remains to consider the limitations which the people of the State have placed upon the law-making agency of their own creation. These limitations, expressed and implied, which are embodied in the State Constitution, are both varied and numerous. Indeed, their complete and detailed presentation would require nothing less than an analysis, classification, and enumeration of practically all of the provisions of the State Constitution — an undertaking which in this connection would be as superfluous as it would be impracticable. As well might the State Constitution be reprinted in full from preamble to schedule. For the purposes of the present discussion a summarized statement with regard to these important limitations will be sufficient.

In the first place let it be recalled that historically the law-making powers of the American State legislature descended from the British Parliament. These sovereign powers should be viewed as residing originally in the people, who through the provisions of the Constitution of the United States delegated a portion of this authority to the Federal government and at the same time denied another portion thereof to the States. What was left of the original law-making authority remained with the people, who created State legislatures for its exercise; and to these legislatures they granted in general terms all of the law-making power of which they themselves were possessed, *with certain limitations*. In other words, the people of the States instead of creating legislatures on the pattern of Parliament provided for law-making bodies with authority distinctly limited by the provisions of a written constitution.

According to this view, the State Constitution as a whole and in all of its individual provisions measures the extent of the constitutional limitations placed by the people of the State upon the law-making power of their State legislature. And herein the delegation of powers to the executive and judicial departments constitute limitations on the law-making authority of the State legislature just as certainly as do the provisions of the Bill of Rights and of the articles on State debts, on militia, and on corporations. And so we come to the conclusion that a complete statement of the expressed and implied limitations on legislative power as found in the State Constitution would require nothing less than an enumeration of practically all of the provisions of that Constitution.

For practical purposes legislators and legislative draftsmen will obtain information concerning specific limitations on the powers of the General Assembly of Iowa by consulting first-hand a copy of the Constitution of the State. With the help of a good index, such as may be found in the pocket edition of the Constitution published by The State Historical Society of Iowa, any point may be quickly found. For light on constitutional limitations as defined by the courts, there is no better reference than Cooley's *Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union*.

NOTES AND REFERENCES

¹ In the sense in which the term is used in this paper, constitutional law is the law of written constitutions as interpreted and construed by the courts. It is a body of supreme law, superior to the statute law.

² For an excellent discussion of the nature and extent of the power of the British Parliament, the reader is referred to Dicey's *Introduction to the Study of the Law of the Constitution*, Pt. I, on *The Sovereignty of Parliament*.

"Parliament can legally legislate on any topic whatever which, in the judgment of Parliament, is a fit subject for legislation. There is no power which, under the English constitution, can come in rivalry with the legislative sovereignty of Parliament."—Dicey's *Introduction to the Study of the Law of the Constitution*, pp. 67, 68.

³ Constitutional limitations may be defined as all those limitations on the exercise of political authority which are prescribed expressly or by implication in written constitutions.

"The law-making power of the State recognizes no restraints, and is bound by none, except such as are imposed by the constitution. That instrument has been aptly termed a legislative act by the people themselves in their sovereign capacity, and is therefore the paramount law. Its object is not to grant legislative power, but to confine and restrain it. Without the constitutional limitations the power to make laws would be absolute. These limitations are created and imposed by express words, or arise by necessary implication. The leading feature of the constitution is the separation and distribution of the powers of the government. It takes care to separate the executive, legislative and judicial powers, and to define their limits. The executive can do no legislative act, nor the legislature any executive act, and neither can exercise judicial authority."—*Sill v. Corning*, 15 N. Y. 297, at 303.

⁴ This enumeration does not pretend to cover all the sources. There are other documents, such as the Ordinance of 1787 and the Organic Law of the original Territory of Wisconsin, as well as other court reports, such as those of the supreme courts of other States, which must be consulted.

⁵ For a discussion of the nature and status of subordinate law-making agencies, see Dicey's *Introduction to the Study of the Law of the Constitution*, Pt. II, Ch. II.

⁶ McClain's *Constitutional Law in the United States*, Pt. VI, Ch. XXXII; Willoughby's *The Constitutional Law of the United States*, Vol. I, Chs. XXIV, XXV; Cooley's *The General Principles of Constitutional Law in the United States of America*, Ch. VIII; Hall's *Constitutional Law*, Ch. XIII; Black's *American Constitutional Law*, pp. 206, 207, 208.

⁷ Willoughby's *The Constitutional Law of the United States*, Vol. I, p. 362.

⁸ For an account of the constitution of the Territory of Iowa, see Shambaugh's *History of the Constitutions of Iowa*, pp. 105-144.

⁹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, No. V, pp. 102-123.

¹⁰ Two very important amendments to the Organic Law were made by Congress in 1839.—See Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, No. V, pp. 117, 118.

¹¹ *National Bank v. County of Yankton*, 101 U. S. 129, at 133.

¹² Organic Law of the Territory of Iowa, Sec. 6.

¹³ Organic Law of the original Territory of Wisconsin, Sec. 12.

¹⁴ A copy of the Ordinance of 1787 may be found in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, No. III, pp. 47-55.

¹⁵ Cooley's *Treatise on Constitutional Limitations* (7th edition), pp. 126, 127.

¹⁶ The most important decisions which relate to the powers of State legislatures are cited in the footnotes to Ch. V of Cooley's *Treatise on Constitutional Limitations*.

¹⁷ *People v. Draper*, 15 N. Y. 532, at 543.

¹⁸ *People v. Draper*, 15 N. Y. 532, at 543.

¹⁹ *People v. Draper*, 15 N. Y. 532, at 544.

²⁰ Cooley's *Treatise on Constitutional Limitations* (7th edition), p. 163.

²¹ Cooley's *Treatise on Constitutional Limitations* (7th edition), p. 165.

²² Cooley's *Treatise on Constitutional Limitations* (7th edition), pp. 157-160.

**METHODS OF STATUTE LAW-MAKING
IN IOWA**

**BY
O. K. PATTON**

I

INTRODUCTION

THE making of statute law is not a simple process: indeed, a highly organized body, like the General Assembly of Iowa, is essential to its enactment. In general the methods of law-making in Iowa do not differ from those found in the other States of the Union or in the Congress of the United States. As a matter of fact, there is great similarity in the organization and procedure of all the great law-making bodies of the world:¹ and it is interesting to note, in this connection, that the British Parliament seems not only to have been the prototype of American legislative bodies, but it also seems to have furnished a pattern for most of the modern European legislatures.² Most of the great nations of the world seem committed to the representative assembly as the principal agency of statute law-making. Nearly every important legislative measure to-day must, before it is finally recorded in the statute books, be submitted to the consideration of and be subject to amendment and rejection by a representative assembly selected for that purpose. Moreover, the British people have not only contributed the principles of modern legislative organization, but they have furnished also the foundation for the methods of present-day law-making. In other words, legislative organization and procedure have had a common origin.

Since this paper deals with the methods of law-making, it is important at the outset to trace briefly the devel-

opment of American legislative procedure. Now the body of rules by which a legislature is governed in the enactment of statutes is known as parliamentary law — a term which originated from the assembly in which the rules of legislative practice were perfected, namely, the Parliament of England.³ As Sir Edward Coke, a noted speaker of the House of Commons, once said, “as every court of justice has laws and customs for its direction, some by the common law; some by the civil and canon law; some by peculiar laws and customs; so the high court of parliament subsists by its own laws and customs”.⁴ Moreover the rules of parliamentary procedure have become so well established, through centuries of growth, that parliamentary law, itself, has become “a branch of the common law and as well settled as any other; and it may be known and determined before hand, with, at least, as much facility and certainty, as any other part of the civil or criminal law.”⁵

It is not surprising, then, that Thomas Jefferson, as president of the United States Senate, should have turned to the British Parliament for guidance in legislative procedure when called upon in 1797 to pass upon all questions of order “without debate and without appeal”.⁶ Up to that time American parliamentary law had been “an agglomeration of English precedents which were revered because they were precedents”.⁷ For this reason, Jefferson during the term of his vice-presidency, found it necessary to compile for his own use, as the presiding officer of the Senate, a set of parliamentary rules based upon the practices of the House of Commons, the provisions of the Constitution of the United States, and the adopted rules of the Senate.⁸ Mr. Jefferson was not certain as to the accuracy of all the rules he laid

down, although they were based upon available English authorities, Hatsel being preëminent in the citations. He said, in the little preface to his rules, "I have begun a sketch, which those who come after me will successively correct and fill up till a code of rules shall be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality."9

Jefferson's prediction has for the most part come true, but his fear of error was not well grounded. His manual has been published in many editions, and is to-day regarded by English parliamentarians as the best statement of the legislative practice in Parliament at the time it was written. At present it forms the kernel of the rules of procedure not only in the United States Senate, but also in the House of Representatives. It was adopted by the House in 1837, and it has remained the authority in the Senate since the days of its author.¹⁰ To be sure, there have been many changes in the procedure of the Senate since 1797 and there have been many changes in the House since 1837, and the practice in the two houses varies greatly, but Jefferson's rules still govern "in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders".¹¹ *Jefferson's Manual* appears as a part of both the Senate and House manuals of the Sixty-third Congress: it has been so published for many years.

Mr. Jefferson's great service to the Senate in 1797 was not only to become the foundation of legislative procedure in Congress, but it was in time to become the corner-stone of legislative practice throughout the Union. The part played by *Jefferson's Manual* in American legislative procedure was well stated by Luther Cushing,

the great American student of parliamentary law, when he said in the preface to his first work written in 1844: "This work, having been extensively used in our legislative bodies, and, in some states, expressly sanctioned by law, may be said to form, as it were, the basis of the common parliamentary law of this country."¹²

In Iowa the legislative bodies early adopted *Jefferson's Manual* by their standing rules — the Council in 1839 and the House in 1846.¹³ Moreover, the General Assembly by law adopted *Jefferson's Manual* in 1846 to govern the proceedings of the two houses when in joint convention.¹⁴ Indeed, it is very probable that Jefferson was followed very closely even before the formal adoption of his manual, since the journals of both branches of the early Legislative Assemblies show that the procedure resembled in general that of the House of Commons in Parliament and since the best statement of that practice which was available for a legislative body was *Jefferson's Manual*. After 1851 the House of Representatives no longer designated a particular manual as the authority for common parliamentary law, but prescribed "the rules of Parliamentary practice."¹⁵ Even under this provision Jefferson was the natural authority to follow. It was about this time, however, that Erskine May, the great English authority, published his monumental work on *Parliamentary Practice* — a publication that has now run through eleven editions, the last appearing in 1906.¹⁶

In 1862 the Iowa Senate adopted *Cushing's Manual* as its guide.¹⁷ The House adopted the same manual in 1888;¹⁸ while the *Code of 1873*¹⁹ named *Cushing's Manual* in place of Jefferson's for governing the proceedings of both houses when in joint convention. *Cushing's Manual*, which bears the same relation to American leg-

islative practice that May's *Parliamentary Practice* bears to English procedure, was first published in 1845 as the *Rules of Proceeding and Debate in Deliberative Assemblies*.²⁰ Later, in 1856, a larger work appeared entitled *Elements of the Law and Practice of Legislative Assemblies in the United States*. For many years *Cushing's Manual* has been recognized as the standard authority in the common law governing the organization and procedure of parliamentary bodies.²¹ Having run through nine editions, the latest of which appeared in 1907, this work has supplanted *Jefferson's Manual* nearly everywhere except in Congress. While *Cushing's Manual* has recently given way in the Iowa House of Representatives to a more popular manual, known as *Robert's Rules of Order*, it is still the rule of authority in the Senate.²²

Thus it is evident that the legislative procedure of both the United States and of the State of Iowa has had a common origin. Having developed in England, these rules have become, by the adoption of authorities and treatises based upon English practice, the basis of American usage. But time has modified the early English rules until there is a distinct system in this country differing greatly in its details from that now followed in England.

Preliminary to the discussion which is to follow a few words should be said concerning the development of the principal forms by which legislative action is expressed, namely, bills and acts. Proposed laws are called "bills" when drawn in the form of statutes, and after they are enacted into law they are called "acts". It should be observed, however, that the present-day conception of laws as rules embodied in statutes is strictly modern.

Indeed, in the earliest times Parliament did not make new laws, it did not legislate: it simply declared what the law was. In those days law was determined by custom and tradition: it was the product of centuries of growth. Not until a later day did Parliament assume the function of legislating, that is, of making laws.²³

From bill to act, however, has not always been the order of procedure in Parliament — even after that body assumed the function of actually making laws. In the earlier days the House of Commons was less powerful than the upper branch of Parliament; and it remained a petitioning house even after Parliament had become a legislating body. The practice was for the lower house to petition the upper house, the King's Council, for a law for the redress of grievances. Later the Commons claimed a share in the making of laws; and finally they determined the character of the law by presenting their petitions in the form of statutes. This was the origin of the modern bill.²⁴

About the same time it became customary to read a bill three times — although the origin of the practice is not precisely known. Moreover, these readings were undoubtedly real readings and not mere stages of procedure as is the case to-day. The first reading was doubtless for information. At the second reading the merits of the bill were discussed; and there was a debate. At this point, if the body did not feel competent to act upon the bill it was committed. After the committee reported, the consideration of the bill was again taken up; and finally, it was given its third reading. Thus there was a proper interval for reflection between readings.²⁵

This practice of giving a bill three separate readings found its way into American and European legislatures

which patterned their procedure after the methods of the English Parliament. The procedure is fully described in *Jefferson's Manual*, and also by Cushing in his treatise on *Parliamentary Law and Practice*. In the United States the use of readings has undergone a great change due to the extensive use of the committee system and the printed bill. It should be remembered that at the time when bills were diligently read on three separate occasions the ability to read was not possessed by every legislator and no modern printing press made it possible to place on the desk of each member all the bills introduced on the preceding day. These changes in conditions and practice are well described in the minority report of the "concurrent" committee on the reading of bills which was presented to the Twenty-sixth General Assembly at its extra session held in 1897 to adopt the present Code of Iowa.

The custom of three separate readings originated in the early days of legislative assemblies when printing was unknown or little used, and when a large proportion of the legislators were illiterate and the members gained their entire knowledge of bills and their contents from the reading by the clerk and the exposition by the Speaker. Since it has become the practice to print all bills in full and distribute copies among the members, the first and second readings have by long practice and usage become merely a formal reading by title. The old rule has been modified in the spirit of the legal maxim laid down by Coke on Littleton that "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself."

Since the reason of the law has made these numerous readings in full useless, cumbersome and obstructive, legislative assemblies have abridged them and resorted to more effective and time-saving methods.

The three separate stages formerly marked by a reading in

full, on separate days, have been retained in practice, to mark the separate stages of the bill in its passage: 1st — Its rejection or acceptance by the House; 2nd — Commitment; 3rd — Discussion, amendment and passage.²⁶

So there have been marked changes in the mode of enactment as well as in the forms used since the early days of the Parliament which gave to the world the basic principles of modern legislative organization and procedure. At the same time the really fundamental principles of legislative organization and procedure which were evolved centuries ago have remained practically unchanged. And yet "it must be remembered that the problem of legislating through the agency of a representative . . . assembly, the necessity for which is admitted by every free country, has nowhere been satisfactorily solved".²⁷

II

GENERAL RULES REGULATING THE PROCEEDINGS OF A LEGISLATIVE ASSEMBLY

THE legislative assembly in most modern governments, including all of the American Commonwealths as well as the Federal government, is composed of two separate and independent branches which are usually endowed with coördinate powers. Both of these branches must concur in each act of legislation, and this concerted action is subject to a qualified veto of the chief executive, at least in America, before the legislative will as expressed in a proposed statute becomes law.

In American legislatures these two branches are in fact equal in power and dignity; but one being smaller and usually more select than the other is called the upper house or Senate, while the other being larger is called the lower house or House of Representatives. In Iowa the members of the upper house are required to possess higher qualifications as to age than members of the lower house, and they are elected for a longer term — which makes it possible to have in the Senate a large percentage of men with former legislative experience at each session.²⁸ This tends to give the upper house more influence in legislation than the lower house. There are States, however, in which the qualifications for membership and the term of office are exactly the same in both branches of the legislative assembly.

The legislative branch of government, although carefully separated and kept distinct by the organic law from

the executive and judicial branches which are coördinate with it, is by its very nature the depository of most of the sovereign power which the people see fit to delegate by their Constitution. Thus the executive and judicial departments find their functions definitely worked out and precisely defined by the fundamental law and that their field of activity is not subject to enlargement or extension by their own acts, while the powers of the legislative department are only generally described and the scope of its action curtailed only by a few constitutional limitations.²⁹ (See Mr. Shambaugh's paper on *Law-making Powers of the Legislature in Iowa* in this volume.)

The very character of legislative power makes it necessary that this department should act with great freedom—more especially since in every emergency not previously provided for it is called upon to decide whether executive, legislative, or judicial interference is needed. Thus it may control, regulate, or limit the executive and judicial branches by general provisions of the law. The legislative assembly, then, is the most important agency in modern government. A study of the methods by and through which it expresses its legislative will is, therefore, of special significance.

SOURCES OF PARLIAMENTARY RULES

The business of every governmental body, whether it be a tribunal like the Supreme Court of the United States, an administrative board like the Executive Council of Iowa, or a legislative body like the General Assembly, is regulated by settled forms and methods which constitute the practice of that particular body. Some of these rules of practice, having to do with the mode of proceedings between the body and those who resort to it, may be called

the rules of external procedure; others, having to do with the method of deliberation, consultation, debate, and the formation of judgment within the body, may be called the rules of internal procedure. In judicial tribunals the rules of practice relate more to external than to internal proceedings; but in legislative assemblies the rules of internal procedure are the more important. Thus it appears that the relative importance of the rules of internal and external practice will depend in part upon the character of the function performed by the body in question.

Besides the function which a body performs, there is another factor which determines in a way the nature and character of the rules of its internal practice, namely, the number of its members. If a deliberative body is small, like a county board of supervisors, it will have little occasion for an elaborate code of rules to regulate its internal proceedings, irrespective of what may be the extent of its powers. On the other hand, if it is a numerous assembly, like the Senate or House of the General Assembly of Iowa, a well settled body of rules providing the methods of procedure is indispensable to a proper discharge of its functions. The importance of established methods is well emphasized by Cushing in his *Law and Practice of Legislative Assemblies* in the following words:

It is highly important to the preservation of order, decency, and regularity, in a numerous assembly, and not less essential to its power of harmonious and efficient action, that its proceedings should be regulated by established forms and methods; and, with a view to these purposes, it is more material, perhaps, that there should be rules established, than that they should be founded upon the firmest basis of reason and argument; the great object being to effect a uniformity of proceeding in the business of the assembly, securing it at once against the caprice of the presiding

officer, and the captious disputes of members. It is to the observance of regularity and order among the members, that the minority look for protection against the power of the majority; and in the adherence to established forms, between the different branches, that each finds its security against encroachments of the others.³⁰

Since the establishment of the rules of procedure which determine the methods of law-making is so important to a legislative assembly, the sources of parliamentary law should be clearly understood. Thus legislative procedure may be said to be based upon usages, precedents, resolutions, orders, and laws. In a particular legislative assembly, like the General Assembly of Iowa, the body of rules which determine the mode of internal procedure is to be ascertained by an examination of all these sources. Definition of these sources is essential to a proper understanding of legislative procedure.

Usages, by which are meant the constant and usual methods of procedure like the proposing of constitutional amendments by joint resolution or the appointment of the standing committees by the presiding officers or the consideration of motions without being seconded, constitute one of the principal sources of authority for legislative procedure. These practices are not provided for in any specific manner, but are to be collected from the journals of the legislature, from the statements of experienced members and officers, and from personal observations of the bodies at work. Indeed, many of the points of modern legislative practice can be known only by personal experience or observation. They are nowhere recorded in express terms, either in the journals or among the adopted rules of the body, but are constantly recognized

and practiced with as much diligence as if they were established by the Constitution. The origin of many of these usages, even in Iowa, can be traced back to the method of law-making in the English House of Commons, whose body of rules is "the fruit of more than two centuries of wisdom and experience".³¹

Precedents, though perhaps more properly classified as usages in their broadest sense, deserve to be especially noted as a source of authority for legislative practice, since they are as much respected by legislative bodies as judicial precedents are by the courts. They are also to be distinguished from general usages, since they establish the rule for procedure on extraordinary occasions. For example, it is a matter of general practice in both branches of the legislature of this State for a member, who is in favor of a measure but fears that some opponent may move a reconsideration of the vote by which it passed the house, to move a reconsideration, and then move to lay the motion to reconsider on the table. This procedure, although considered as practically final in both bodies for some time, did not properly establish a line of precedents, for the reason that no decision of the chair or house was involved — the action being allowed to stand merely as a matter of acquiescence. It was during the session of the Thirty-sixth General Assembly that a precedent was finally established in this matter. The president of the Senate ruled that a motion to reconsider a vote by which a motion to lay a motion to reconsider on the table passed the house, was not in order. This decision being appealed from was sustained by a vote of the Senate.³² Thus a real precedent was established in the General Assembly of Iowa. Henceforth when a mo-

tion to reconsider a vote by which a bill passed the house is laid upon the table, that action will be final unless a motion to take from the table is made, which motion, under the rules of the Senate, requires a two-thirds vote.³³

The above example shows how precedents originate and become authority for procedure in a State legislature. Similarly precedents have originated in the Congress of the United States. In fact, the precedents of the lower house of Congress have been collected and published in eight large volumes, which are known as *Hinds' Precedents*.³⁴ Unfortunately no such elaborate collection has ever been compiled for any American State legislature. In Iowa *Hinds' Precedents* have been cited and followed as a source of authority.³⁵

Resolutions entered in the journals of a legislative body also constitute an important authority for the methods of legislative procedure. Examples of this kind are the entries made from session to session in the journals of the two branches of the legislature of Iowa, providing for the appointment of a sifting committee. Since 1872 the appointment of such a committee has always been authorized by resolution in both houses near the close of the session.³⁶ The practice of using a sifting committee is now so well established in Iowa as to be properly considered a usage of the legislature; but since the committee is always specifically provided for by resolution, it is more accurate to say that the authority for the practice rests upon resolution more than upon usage, as that term has been defined.

Another important practice in the Iowa legislature, which rests upon resolution, is the use of a calendar. It is customary in both branches of the legislature at an

early date to authorize the preparation of a calendar by the recording officer of each house.³⁷ Now a legislative calendar is simply a list of the bills that are ready for final disposition by the house. It is made up from day to day and consists of the bills which have come to a third reading and those which have been made special orders for the day. Like the sifting committee, the calendar, which is printed and placed on the desks of the members each morning, is a matter of usage in the General Assembly which is commonly provided for by resolution. It may, however, be established by a simple motion, and at times it appears to have been authorized only by custom.³⁸

Orders or standing rules constitute another source of authority for parliamentary practice. In Iowa they consist of the formal rules and regulations of the General Assembly. In other words they constitute the by-laws that have been expressly agreed upon by both houses for the government of their own proceedings. They include also the joint rules which have been concurred in by the action of both branches for the control of their inter-relationships.

The Constitution of Iowa provides, however, that each house shall determine the rules of its own proceedings, and one General Assembly can not make any rule which will be binding upon its successor.³⁹ But from the very outset the practice in this State has been for each house at the beginning of the session to adopt as temporary rules the rules of the preceding House or Senate, as the case may be, and then to appoint a committee on rules.⁴⁰ At a later date the committee on rules from each house invariably reports back the rules of the preceding house

with or without amendments, and this report is usually adopted without question.⁴¹

As a matter of fact, some of the present rules of the House and Senate, as adopted at the regular session of the Thirty-sixth General Assembly, are almost identical with similar rules adopted by the respective houses in the First Legislative Assembly of the Territory in 1838.⁴² Of course most of the rules have been changed or modified since 1838, but by no means all of them have lost traces of the language of their progenitors. This is especially true of the joint rules of the two houses of the legislature — the joint rules of the Senate and House of the Thirty-sixth General Assembly being conspicuous for their similarity to the first joint rules adopted in Iowa.⁴³ From session to session the joint rules of the legislature are carried forward by adopting the joint rules of the preceding assembly or by acquiescing in them. If there are no objections or proposed changes no formal action is usually taken, the joint rules being continued by virtue of their adoption in each house as temporary rules at the outset of the session.⁴⁴ Although the joint rules may be amended either by a concurrent resolution or by adopting the report of a joint committee on rules, the changes are few.⁴⁵ Thus growth in the rules of the separate houses, as well as in the joint rules, is very slow.

The Thirty-sixth General Assembly, however, made some important changes in regard to the rules concerning the consideration of bills in committees; and it appears that some additions were made to the joint rules by the Thirty-fourth General Assembly.⁴⁶

Indeed, in the course of time the rules of any American legislative body, by amendments and accessions made during a particular session, together with the changes

made by each successive body before adopting the rules of a former body, will show substantial growth, producing at last a code of rules of uniform and consistent character. At the same time every legislative assembly, both before and after it has adopted the standing rules of its predecessor, is by the very fact that it is a deliberative body governed by the common parliamentary law of the land. In Iowa it has been the practice for each branch of the legislature to fix by its standing rules the authority by which the common parliamentary law enforced in that body shall be determined. Thus in 1915 the Senate named *Cushing's Manual* as its guide, and the House adopted *Robert's Rules of Order*.⁴⁷ And yet the authorities adopted are not always followed: the president of the Senate in 1915 cited *Robert's Rules of Order*, Gregg's *Parliamentary Law*, and Smith's *Parliamentary Law* in support of a ruling made by him, which was in opposition to the statement of the rule as found in *Cushing's Manual*.⁴⁸ Usually, however, other authorities are cited in support of the established authority.

Laws constitute still another source of authority for legislative procedure: they are of two kinds, constitutional and statutory. For example, the Constitution of Iowa provides that when a bill is placed upon its final passage the yeas and nays shall be recorded in the journal, while the Code provides the method of citation in repealing laws.⁴⁹ Here are illustrations of both constitutional and statutory provisions regulating procedure. The constitutional provisions have usually been construed by the courts to be mandatory, while the statutory provisions have usually been held to be only directory.⁵⁰ In other words the organic law may prescribe and absolutely fix a rule of legislative procedure, but statutory

law can not do this since one legislature can not bind another even by law.⁵¹ While no legislative body need comply with any of the statutory regulations of procedure, it usually does so. Thus statutes may be said to constitute an important source of parliamentary law because as a matter of fact they are acquiesced in and followed to a very large extent.

After a consideration of these principal sources of authority for legislative practice, attention should be called to the fact that irrespective of usage, precedent, resolution, order, or statute, a legislative body may act as it pleases in every instance that arises so long as it keeps within the provisions of the Constitution. To be sure, any member has the right to insist upon the observance of all of these authorities. At the same time any member may waive his right to insist upon their observance. And so it has become an established practice in Iowa for each house to do anything, or to proceed in any manner, though contrary to one or all of these authorities, provided it is done by general consent, that is, by unanimous consent.⁵²

Furthermore, it is an established practice in Iowa for the houses to proceed as they may see fit by suspending the rules. This is necessary in every case when unanimous consent can not be obtained: it is accomplished by motion and vote.⁵³ At present the motion to suspend the rules requires a two-thirds vote, while formerly in one of the houses it required a three-fourths vote.⁵⁴ The obtaining of unanimous consent and the suspending of the rules are so common in the General Assembly of Iowa that few bills are passed in either branch without the use of one or the other of these devices for shortening the

stages of procedure. Indeed, when a large number of bills are introduced with no attempt to exclude undesirable measures at the time of their reception, some instruments of expediency like unanimous consent and suspension of the rules are almost necessary to the workings of a legislative body.

Moreover, the freedom that is given in the introduction of matters for the consideration of the legislature has resulted in the development of a speedy method of disposing of the great mass of subjects — namely, the committee system. Since every bill has presumably been carefully digested by a committee, it is not necessary for the legislature to go tediously through a first, second, and third reading, or to wait for engrossment when few changes have been made on the floor of the house. Thus the use of short cuts has been the inevitable result of the unrestricted introduction of bills.

Having considered, in a general way, the source of legislative rules, it will now be of importance to consider the principal forms of expressing the ordinary proceedings of a legislative body, for the purpose of giving a general conception of the mechanism of legislative procedure.

PRINCIPAL FORMS FOR EXPRESSING ORDINARY ACTION

The primary function of a legislative assembly is the making of laws, but in the consideration of the vast amount of business that is brought before it certain forms or instruments are made use of which do not have for their purpose the expression of the legislative will as law. These forms may be said to give expression to the legislative will in subsidiary and incidental matters. Of the principal forms the following should be carefully defined: motions, orders, resolutions, and messages.

Motions are propositions made to the assembly by some member and, according to the rule of common parliamentary law, seconded by another member. Motions are not seconded, however, in the Senate of the General Assembly of Iowa — this requirement having been relinquished as a matter of usage.⁵⁵ In the House of Representatives the motion to reconsider the vote upon a bill and the motion to order the previous question are generally seconded.⁵⁶ The rules of the lower branch, on the other hand, provide that “when a motion is made and seconded, it shall be stated by the speaker”.⁵⁷ As a matter of practice, however, this rule is not enforced.

By motions the legislative body takes action, orders things done, and expresses its opinion. When a motion is adopted by a vote of the legislative body it becomes an order or resolution, depending upon the character of the action taken. By the common rules of parliamentary law, every legislative process must be set into operation by means of a motion, and carried forward at every succeeding step by the same means. For example, in the First Legislative Assembly of the Territory of Iowa, in which the procedure resembled closely that of the British Parliament, it was necessary in order to carry a bill through to its final stage, that is, to the question of its passage, to move: first, that leave be given to introduce it; second, that it be read a first time; third, that it be committed; fourth, that it be engrossed; fifth, that it be read a third time; and sixth, that it be put upon its passage. If at any point in the procedure the proper motion for going ahead was not made, the bill remained in the stage in which it was thus left; and if no further motion was ever made it was said to be dropped. It appears, nevertheless, from the journals of the Territorial legislature

that the presiding officer often put the question next in order without waiting for a motion to that effect. To-day nearly all of these steps are taken without the formalities of either motions or votes: they are taken as a matter of course.⁵⁸

As a matter of theory, however, it could be said even to-day that these various steps are really taken by motion — the motions being made by implication. But as a matter of fact, no one thinks of the three modern stages of procedure as being taken by motion in any form, not even by implication. The three stages that are left — (1) rejection or acceptance by the house, (2) commitment, and (3) discussion, amendment, and passage — are taken as a matter of usage, this practice having become a settled one in Iowa.⁵⁹ Motions, however, are still the most common forms of expressing the legislative will in regard to the subsidiary and incidental matters that come before a legislative assembly.

Orders constitute one of the forms of action which a legislative body takes by adopting motions. When a legislature directs or commands its officers, members, or even outsiders to do something by adopting a motion, its will is expressed in the form of an order. Thus, it orders the clerk to place a bill on the calendar; it orders a bill to lie on the table; it orders a vote on a bill to be reconsidered; or it orders an address to be printed in the journal.⁶⁰ In determining whether a motion, when adopted, becomes an order, no attention is paid to the form of the motion: everything depends upon the character of the action — is it a command?

Many motions commence with a resolving clause; and so orders in the form of resolutions are very common.

Indeed, at the very first session of the legislature in Iowa a large number of the simplest motions contained a resolving clause.⁸¹ Moreover, it is customary for a legislative body, when it orders itself to do something, to express its will in the form of a resolution. These practices have tended to blot out the distinction between orders and resolutions as such and to substitute therefor a popular classification of forms for expressing the legislative will on subsidiary and incidental matters into motions and resolutions — a classification which is based upon form rather than upon substance. In fact, orders are probably regarded by most legislatures as being either the standing orders provided by the rules or the special orders which are made from day to day; they do not think of every motion when adopted as being either an order or a resolution. As a result, resolutions are not now usually thought of as being motions, which of course they are. Thus it is not uncommon to find entered in a legislative journal that something was “ordered”, when the record shows that it was “resolved”; or that something was “resolved” when, as a matter of fact, it was “ordered”. It is, however, important to distinguish real orders from mere resolutions for many purposes.

Resolutions, as above indicated, are another form of action which a legislature takes in adopting motions. When a legislative body expresses an opinion or sentiment by agreeing to a motion that action is, in a technical sense, a resolution. But since this technical distinction is seldom made in the General Assembly, it will be more important at this point to deal with the three types of resolutions which have become well established in the legislative practice of Iowa — namely, simple resolutions,

concurrent resolutions, and joint resolutions⁶²— although the status of each is somewhat difficult to ascertain.

A simple resolution is to be distinguished from an ordinary motion by its form; it is above an ordinary motion in formal dignity.⁶³ A concurrent resolution is similar to a simple resolution, except that it is adopted by both branches of the legislature, instead of by just one house: it expresses the action of the legislature as one body, while a simple resolution expresses the action of but one of the branches of the legislature.⁶⁴ A joint resolution is above a concurrent resolution in formal dignity, and although it is similar to a concurrent resolution, it has thrown around it all the formalities of a bill and passes through all the stages that a bill passes through: it is, in addition to the ordinary use of the resolution, employed for the making of temporary laws and administrative orders.⁶⁵

The use of these three types of resolutions by American legislative bodies is very old. The first resolution ever adopted in Congress was in the form of a simple resolution, it was adopted by both the Senate and House and presented to the President who signed it.⁶⁶ Some of the first concurrent resolutions of Congress, as well as the joint resolutions, were presented to the President for his signature. But at an early date it became customary to use simple resolutions by the separate branches of Congress as independent bodies, and to use concurrent resolutions when Congress as one body wished to take action by resolution in regard to some subsidiary or incidental matter. At the same time it became no longer customary to submit concurrent resolutions to the President, that formality being preserved only for joint resolutions. And since simple resolutions were no longer used for joint

action, they were, of course, not submitted to the chief executive.⁶⁷ The Congressional practice is the basis for the present usage in Iowa.⁶⁸ The use of these forms of action is all a matter of custom, resolutions not even being mentioned in the Constitution of Iowa.

At the present time resolutions are used largely for three purposes — to express an opinion or sentiment, to issue an administrative order, and to make temporary laws. When resolutions are used for law-making the legislature is not then expressing its will in subsidiary and incidental matters; accordingly that usage of the resolution will not be considered in this connection. The issuing of administrative orders is in a sense law-making, but such orders are not usually considered as laws proper. Moreover, there is usually some general law upon which every administrative order is based; and so it will be proper to consider the use of resolutions in issuing administrative orders at this point. There seems to be no well established usage in regard to the type of resolution used and the purpose to be accomplished. The more common use of the different types may, however, be indicated.

Simple resolutions are for the most part used to express sympathy or thanks. Indeed, a large majority of the simple resolutions offered in the House and Senate during the last five sessions of the General Assembly were memorial resolutions or resolutions of sympathy extended to members on account of accident or death in their families. The total number of simple resolutions adopted during this ten year period was sixty-four in 1907, sixty-four in 1909, forty-six in 1911, ninety-nine in 1913, and sixty-six in 1915.⁶⁹

It is, also, customary in both branches of the State legislature, to adopt resolutions of thanks and apprecia-

tion for the various officers, employees, and press representatives who served the respective houses during the session.⁷⁰ At times provisions are made by resolution for committees to attend the funerals of distinguished persons or to attend meetings of various kinds.⁷¹

A much more important rôle is played by simple resolutions in connection with legislative procedure. It is by simple resolution that a calendar of bills is provided and that a sifting committee is created.⁷² The publication of rules, the printing of extra bills and journals, and the changing of rules of procedure are likewise accomplished by simple resolution.⁷³ In the same manner committee clerks and legislative employees are arranged for.⁷⁴ Thus also by simple resolution the employees of the houses are directed and controlled.⁷⁵ Many of these simple resolutions contemplate the expenditure of money, but in such instances they are based upon some general law and are, therefore, mere administrative orders. For example, the printing of extra bills and journals necessitates an expenditure of money, but the Code provides that the State printer shall print any matter ordered printed by either branch of the General Assembly, and the money is actually appropriated by the section of the Code providing for the payment of the State printer.⁷⁶ In like manner the payment of legislative officers is provided for; and, although the houses fix the number of committee clerks by simple resolution, they are authorized to do so by the Code, the appropriation for all salaries being made in the section of the Code authorizing the payment of salaries of the employees and officers of the General Assembly upon presentation of the certificate of service signed by the speaker or president, as the case may be, to the Auditor and the authorization of the Treas-

urer to pay the warrants, thus issued, out of any money not otherwise appropriated.⁷⁷ The principal function of the simple resolution is, then, to express the legislative will in subsidiary and incidental matters, especially in matters of ordinary action.

Concurrent resolutions do not differ greatly in their function from simple resolutions, except that they express the will of the whole legislature. By them joint conventions and sessions are arranged; Congress is petitioned to take some action; recommendations for amendments to the Federal Constitution are suggested; adjournments and recesses during the session are provided; and joint rules are adopted.⁷⁸ Moreover, conveniences for the legislature are established by concurrent resolution, like the provisions for a lunch room in the basement of the capitol and for mail service during the session.⁷⁹ Furthermore, the concurrent resolution is used for issuing administrative orders. For example, by it the Secretary of State is directed to furnish copies of different publications of the State, like the Code and the session laws, to the members of the legislature.⁸⁰ This use of the concurrent resolution approaches very near to the character of law-making, and will be discussed later in that connection.

There have not been as many concurrent resolutions used in recent years as simple resolutions. In 1907 there were twenty-five concurrent resolutions; in 1909, twenty-five; in 1911, thirty-seven; in 1913, fifty-four; and in 1915, forty-six.⁸¹

Joint resolutions, carrying all the formalities of a bill, are used primarily to propose amendments to the State Constitution and to approve plans for buildings at the various State institutions as such plans are submitted

from time to time by the boards in charge of those institutions.⁸² Moreover, a joint resolution is frequently used in place of a concurrent resolution to express an opinion or sentiment. Thus in 1858 the legislature of Iowa expressed its opinion in regard to the Dred Scott decision by joint resolution.⁸³ At the same time the General Assembly expressed the policy of the State toward slavery in the form of a simple resolution as follows:

Resolved, That the State of Iowa will not allow slavery within her boundaries, in any form or under any pretext, for any time however short, be the consequences what they may.⁸⁴

In fact joint resolutions may be used in the place of concurrent resolutions in expressing the will of the legislature on subsidiary or incidental matters, in declaring the policy of the State, or in suggesting action to Congress. There is no well settled American practice which makes the one form more desirable than the other for such matters. The concurrent resolution is easier to handle, because the stages in its adoption are much simpler than those in connection with a joint resolution, which carries with it the formalities of a bill.

Messages constitute another important form by which the ordinary procedure of a legislative body is expressed. The two houses of a legislature, being branches of the same body and carrying on their meetings at the same time for the simultaneous discharge of the same function, have many occasions to communicate with each other. These communications are carried on by means of messages.

Messages pass between the two branches of the General Assembly for a great many things, and they may lead

to more important modes of intercourse — namely, the conference and the joint committee. Most messages, however, deal with the proceedings on bills. In Iowa messages are conveyed from one house to the other by the chief clerk of the House or the secretary of the Senate, as the case may be, although at times assistants of these officers carry the messages.⁸⁵ When the House or Senate wishes to communicate to the other branch of the legislature some action that it has taken in regard to a bill, the clerk or secretary proceeds to the Senate Chamber or Hall of Representatives with the message in which is embodied the communication that is to be delivered, and after being escorted by the doorkeeper to the central aisle which leads to the presiding officer's desk, the doorkeeper addresses the chairman in proper form and announces the message to the house.⁸⁶ The clerk or secretary reads the message and it is then delivered to the presiding officer's desk where it lies until acted upon by the house.⁸⁷ The consideration of messages on the presiding officer's table is a regular order of daily business in both branches of the legislature.⁸⁸ Furthermore, this order of business is frequently reverted to near the close of the day's session in order to get the bills involved in the hands of the proper committee as soon as possible.

No particular form of message is prescribed by the rules of either house. In practice it is a simple statement signed by the recording officer of the house making the communication to the effect that he has been directed to inform the honorable body that the House or Senate, as the case may be, has taken certain action in regard to a particular bill. It is customary to give the file number and title of the bill in the message. When a message is delivered it is accompanied by the bill and the amendments with which it deals.⁸⁹

PRINCIPAL FORMS FOR EXPRESSING LEGISLATIVE ACTION

Having considered the more important forms which give expression to the ordinary proceedings of a legislative body, it is now proper to consider briefly the principal forms by which the legislative will in regard to laws is actually expressed — that is, the forms which are used in making statute laws.

The common form in which a proposed law is presented to an American legislative body is a bill; but there is another form in which such measures are sometimes offered to legislatures in this country, namely, as joint resolutions. The line which divides these two forms of presenting propositions to a law-making body can not be accurately drawn. When a proposed law deals with some special situation, or when the intention is that it shall be only temporary in its operation, the custom is to present it in the form of a joint resolution. Thus the extra employees of each General Assembly are provided for by joint resolution; so also are the employees for the biennial period in all of the departments at the seat of government.⁹⁰ This action, in both instances, is of a temporary character: it is not a permanent arrangement, but only for the time being. It was by joint resolution that the committee on retrenchment and reform was first authorized to employ expert engineers.⁹¹ This was a special situation that developed out of the functions of the committee on retrenchment and reform — a committee which is created by statute in Iowa.⁹²

The records show that the great mass of the legislation which is presented to the legislature of Iowa, is proposed in the form of bills, not joint resolutions. In the Thirty-sixth General Assembly there were 1279 bills introduced and only thirty-five joint resolutions.⁹³ Of

course, it must be remembered in this connection that most of the proposed laws are of a permanent and general character and are not temporary and special in their nature. This in itself would explain the large use of bills rather than joint resolutions. And yet, as has been pointed out, not all joint resolutions are of a law-making character: they are used for proposing amendments to the State Constitution, for approving plans of public buildings, and for other purposes.⁹⁴ But the joint resolution as a form of presenting proposed legislative action to the General Assembly is sufficiently common to warrant a brief consideration of some of the difficulties connected with its use in expressing the legislative will before considering the different types of bills.

Resolutions.—Joint resolutions are not recognized by the Constitution of Iowa as they are by the Constitution of the United States.⁹⁵ The Constitution of Iowa refers to bills and laws and declares that every law shall be in the style: "Be it enacted by the General Assembly of the State of Iowa."⁹⁶ Now it has been maintained by some authorities that when a Constitution is silent as to joint resolutions but contains many provisions in regard to bills, the inference is that all laws should originate by bill. These same authorities further maintain that the requirement that "every law" must have a particular enacting clause precludes the use of the joint resolution in law-making.⁹⁷ Upon this proposition the courts appear to be divided in the few decisions that have been rendered.⁹⁸ In the judicial interpretations the courts have disagreed upon whether the language of the Constitution requiring an enacting clause is directory or mandatory. Those holding the

provision to be mandatory have usually reached the conclusion that law can not be enacted by joint resolution. No decision upon the point has been rendered in Iowa. The problem, however, worried Governor Lowe in 1858 when he returned certain joint resolutions to the Senate stating that:

The Constitution of this State requires the style of all laws to be, "*Be it enacted by the General Assembly of the State of Iowa.*" The resolutions in question are wanting in these enacting words of the Constitution.

It has frequently been held that without them the law is not and cannot be valid, nor will equivalent words satisfy the absolute requirement of the Constitution in this respect.⁹⁹

Irrespective of what may be the constitutional status of the joint resolution, it has been used in the Iowa legislature ever since Territorial days. These first legislative bodies, however, seemed to make no distinction between joint and concurrent resolutions, both being used for making law as well as for other purposes.¹⁰⁰ As late as 1848 the legislature was using the concurrent and joint resolution without distinction.¹⁰¹ In 1860 the House of Representatives was in doubt as to the effect of a joint resolution, due probably to the Governor's message of 1858. The following report of the committee throws some light on the legislative practice of the time:

First — That in the Congress of the United States, joint resolutions are in use as a form of legislation chiefly for administrative purposes of a local or temporary character, and are in that body regarded as bills, and governed by the same rules, and that this is so under Sec. 7, Art. 1, of the Constitution of the United States.

Second — That in some of the States this mode of legislation is fully recognized by their Constitutions, and for the purposes

intended, joint resolutions are placed on an equal footing with bills, properly so called, and are governed by like rules of proceeding.

Third — That joint resolutions are not expressly recognized by the Constitution of this State; and in the opinion of the committee, a joint resolution, viewed as a law, properly so called, has no force or validity; inasmuch as the style invariably used in such resolutions is a departure from the *style* strictly prescribed by the Constitution itself.

Your committee are, however, of the opinion that the General Assembly may, under parliamentary usage, properly *direct* and *control*, by means of joint resolutions, the affairs and property of the State, or their own proceedings, as heretofore customary.

Your committee take leave to suggest, in this connection, that the General Assembly may accomplish by a simple concurrent resolution, all that may be accomplished by joint resolution treated and framed as a bill.¹⁰²

Even to this day the General Assembly does in certain instances control and direct the affairs and property of the State by concurrent resolution. For example, at each session of the legislature it directs the Secretary of State to deliver to each member of the General Assembly a copy of the Code, together with the supplements, and the journals and session laws of the last legislature;¹⁰³ and it often orders the rules of the General Assembly printed and bound in leather.¹⁰⁴ Moreover, by concurrent resolution certain officers of each house are authorized to remain at the capitol to wind up the affairs of the legislature after its adjournment.¹⁰⁵ While all measures of this type are of a law-making character, the procedure involved in their adoption is much different than that employed in the case of legislation resulting from bills or joint resolutions. The latter pass through a first, second, and third reading and

are presented to the Governor for his approval; but concurrent resolutions are simply offered, adopted, and concurred in by the other branch of the legislature — their primary use being not the making of law, but the expression of the legislative will in subsidiary and incidental matters.

After the report of the judiciary committee in 1860, to the effect that joint resolutions could not be used for the making of laws, the legislature nevertheless did in 1884 appropriate money by joint resolution.¹⁰⁶ Moreover, the *Code of 1897* expressly recognized the joint resolution as a form of law.¹⁰⁷ Indeed, the Code not only refers to joint resolutions, but it expressly authorizes the appropriation of money and the providing for certain State employees by joint resolution.¹⁰⁸ These sections were adopted in spite of the fact that the Constitution provides that every appropriation shall be made by law.¹⁰⁹ While the Code views the joint resolution as a form of law, the Constitution does not require it to pass through all the formalities of a bill. It does not even require that joint resolutions be submitted to the Governor — although as a matter of fact they always have been thus submitted. The confusion and difficulty which exists in the use of joint resolutions under the Code is brought out in the following passage from Governor Drake's message of 1898:

There should be some statutory definition of what constitutes a "joint resolution" and how it should be passed, the constitution being entirely silent on the subject. That instrument makes provision only for the enactment of laws, even providing what shall be the enacting clause. In this respect it is quite unlike the federal constitution, which distinctly provides that "every order, resolution, or vote" to which the concurrence of the two houses

may be necessary (except on a question of adjournment) shall be "subject to the rules and negotiations prescribed in the case of a bill." The practice has prevailed in this state of passing upon joint resolutions precisely as bills, except that, as I am advised, the rules of the houses have not always required that each joint resolution receive a majority vote of the members of both houses on its passage. They have ordinarily, however, perhaps always, been presented to the governor for his signature. During the regular session of the Twenty-sixth General Assembly I signed a few that were presented to me that were in the shape of memorials to congress, although then in doubt as to the propriety of so doing. More mature deliberation satisfied me that if a "joint resolution" had weight at all under the constitution and laws of the state it was just as valid without my signature as with it or even if disapproved by me. Hence, I declined to act on those that were presented in the latter part of the regular session and altogether on those passed at the called session.¹¹⁰

The legislature failed to act upon the Governor's recommendation, but since that time every Governor has treated bills and joint resolutions alike. In fact, it is a well settled practice in Iowa to consider joint resolutions on a par with bills, although the use of joint resolutions is probably declining in this State. At least the great mass of laws are enacted by bill. Thus in the Thirty-second General Assembly only eight joint resolutions were adopted; in the Thirty-third, eight; in the Thirty-fourth, six; in the Thirty-fifth, thirteen; and in the Thirty-sixth, eleven.¹¹¹ As far as law-making by resolution is concerned, it will not be necessary in what follows to notice the distinction between joint resolutions and bills.

Bills.—Theoretically bills may be divided into three classes: public, private, and judicial. A public bill proposes a statute which acts upon some subject in which the

whole community is interested, and when enacted adds to the body of the general law, like the negotiable instruments act of 1902.¹¹² A private bill proposes a law for the peculiar interest and benefit of some person, or group of persons — for example the act of 1913 providing pensions for the survivors of the Spirit Lake relief expedition of 1857.¹¹³ When enacted such a statute forms an exception, as far as its particular subject is concerned, to the general law. These two types of bills propose statutes which are purely legislative in their character, that is, they provide prospectively for the regulation of something of public or private concern. The third type of bill, not being strictly of a legislative character, is termed a judicial bill. It has for its purpose the settlement of some matter of conflicting right between individuals or between the State and individuals, like acts confirming title and authorizing the execution of a patent conveying the State's interest in land to some individual or the payment of claims against the State.¹¹⁴

This theoretical classification, however, is not followed as a matter of practice: that is to say, a member of a legislature does not have this classification in mind in introducing bills. Seldom do public, private, or judicial bills appear in their pure form in Iowa. Indeed, bills in the General Assembly are usually so mixed in character that a so-called public bill may be partly private and partly judicial. In like manner a private bill frequently contains matter of a judicial character and often has a general interest. Moreover, a judicial bill is necessarily private in character, since it affects primarily the rights of the parties involved. These distinctions, however, are not of vital importance in Iowa since the procedure is the same for all kinds of bills.¹¹⁵

III

STEPS IN THE MAKING OF STATUTE LAW IN IOWA

FROM the foregoing discussion of rules and forms it appears that a bill or joint resolution is a proposition set forth in a special form of words and which purports to be an authoritative expression of the legislative will. When this special form of words is agreed to by the two houses of the legislature, the bill or joint resolution becomes a law. The arriving at this agreement by the two branches of the legislature is known as the passing of a bill, and the forms and proceedings used in reaching this agreement constitute the methods of statute law-making. The object of all forms and rules of procedure is to make it possible for the General Assembly to determine its will upon a particular subject of legislation with freedom in deliberation and intelligence in judgment, and when so determined to give it immediate expression in the form of words best suited to the object in view.

DRAWING OF BILLS

In the General Assembly of Iowa, as in other modern legislative bodies, the first step in actual law-making is accomplished by presenting a bill, that is, by introducing it into one of the houses. Before such a bill can be introduced, however, it must be framed: indeed, the drawing of a bill — aside from the importance which attaches to the fact that it may become a law — is vital to its passage. For when a bill is hastily drawn, even if the legis-

lature is favorably disposed toward the subject-matter, many changes and alterations may be required before it is acceptable as to form, and this invites amendments in both houses and tends to delay its progress at every stage and subject it to the possibility of defeat. On the other hand, if the bill is well drawn and with a view to its passage, the rapidity with which it proceeds through the legislature is in itself somewhat of an assurance of its final adoption. Moreover, there is a fundamental principle, respected by every legislative body, that bills must be drawn both as to substance and form in conformity with the rules of the house into which they are introduced. To introduce a bill by any other method requires unanimous consent or a suspension of the rules.

In Iowa both the Senate and House of Representatives have adopted rules regulating the form in which bills may be presented.¹¹⁶ These rules are subject to change from session to session. In the Thirty-sixth General Assembly the Senate required every bill when presented to be "typewritten double-space, and accompanied by two copies",¹¹⁷ while the House required all bills to be "typewritten, accompanied by three carbon copies".¹¹⁸ One copy was marked and known as the "original" and one as the "printer's copy". The rules of both houses require bills to be endorsed by the Representative or Senator presenting them.¹¹⁹

In addition to the rules of the two branches of the legislature the General Assembly has passed certain laws which indirectly govern the form of bills. When a law requires an act of the legislature to be in a certain form, that means that a bill proposing such an act must be in the same form. For example a section of the Code reads:

“Every act passed in amendment, modification or repeal of a law, shall in its title and in the body of the act itself, refer to the law so amended, modified or repealed”.¹²⁰ Thus when a bill proposes the repeal of some part of the Code which appears as a section it should refer to that part of the Code by its section reference. If the part of the Code to be altered appears as a chapter, the bill should refer to it by title and chapter. Bills drafted in this form will, when enacted into laws, comply with the statutory regulations in regard to designating laws.¹²¹

The same rules should be kept in mind when drafting bills affecting sections or chapters in the *Code Supplement of 1913* and the *Supplemental Supplement to the Code of Iowa, 1915*. When a bill proposes a change in some act of the General Assembly not found in the Code or supplements, it should be designated by referring to the chapter of the act and the number of the General Assembly by which it was enacted.¹²²

Furthermore, in making any of the above references the law prescribes that the numbers of the sections, titles, and chapters should be expressed in words followed by the figures in parentheses. These statutory provisions are of course directory and not mandatory:¹²³ if followed they make for uniformity, clearness, and definiteness.

Attention should also be directed to a constitutional provision which has some control over the form of bills, namely, the clause which provides that “every act shall embrace but one subject, and matters properly connected therewith”.¹²⁴ This provision has for its purpose the avoiding of “improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other”.¹²⁵ Although this provision is directed at laws, it must necessarily be kept in mind in drafting bills which are but embryonic statutes.¹²⁶

Not all of the regulations, however, governing the form of bills are found in the rules of the General Assembly, the statutes of the legislature, or the Constitution of the State. In fact, most of the regulations as to form are matters of custom. Since the origin of the bill as a method of proposing legislation in the House of Commons of the British Parliament,¹²⁷ certain things have become essential parts of every bill through practice: that is to say, the principal parts of every bill are customary. Some of the features that may be found in a bill are the title, the preamble, the enacting clause, the purview or body, the proviso, the schedule, and the publication clause. Not all of these may appear in every bill, but they are the standard parts which should be kept in mind in framing a proposed law.

Title.—The title is the short statement prefixed to a bill indicating its content and purpose. It is not, legally speaking, a part of the act after the bill is passed, but in a parliamentary sense the title is an important and essential part of a bill to be considered and amended at the pleasure of the legislature. The rules of one of the branches of the General Assembly of Iowa require that all bills when introduced shall have a title prefixed; and the Constitution of the State provides that the subject of every act shall be expressed in a title.¹²⁸

Preamble.—The preamble of a bill is the statement, by way of introduction, of the reasons for presenting the bill to the legislature; and it follows the title. In England every private bill contains a preamble, but such forewords are frequently omitted from public bills. Most of the bills introduced in recent sessions of the Iowa legisla-

ture have been without preambles. Of the 1279 bills introduced in the Thirty-sixth General Assembly only thirty-five of the printed bills had preambles. Moreover, in almost every case these bills were for special acts, the preamble explaining the reason, exigency, or necessity for such action. In addition to these thirty-five bills there were some fifty odd legalizing acts which were not printed, but which contained in nearly every case a preamble. Indeed, it has been the custom in Iowa to introduce with a preamble every bill proposing a legalizing act. Thus it appears that the use of preambles in Iowa does not differ greatly from the English practice — special acts are given preambles, general acts are not. Occasionally some general act of a judicial or temporary character will also be given a preamble to explain its purpose.¹²⁹

Enacting Clause.—The enacting clause is the statement of the enacting authority. It follows the preamble, when there is one, and precedes the body of the act. This part of a bill is as essential as the title, since every valid law must contain a statement of the enacting authority. Where no enacting clause is prescribed by the Constitution any words which state with clearness the enacting authority are sufficient. Much depends upon custom and usage. All but five of the American States prescribe the enacting clause in their Constitutions.¹³⁰ Before Iowa was admitted into the Union a form of enacting clause was provided by concurrent resolution, but the Constitutions of 1846¹³¹ and 1857 both specify the words of the enacting clause.

The present Constitution provides that “the style of every law shall be, ‘Be it enacted by the General Assembly of the State of Iowa.’ ”¹³² This requirement raises

the question as to whether a joint resolution can be valid as a law if it does not have the enacting clause. As a matter of fact, some of the recent joint resolutions adopted in this State contain the enacting clause prescribed by the Constitution.¹³³ Space will not permit the determination of this point here, but it is well settled that when an enacting clause is prescribed by the Constitution that form must be used or the law will be invalid.¹³⁴ It is interesting to note that although the enacting clause used by Congress rested upon custom for many years, it is now provided for by statute,¹³⁵ while the enacting clause of Parliament still remains a matter of custom.

Purview.—The purview or body of a bill is the portion of the proposed law in which the legislative will is expressed: it constitutes the principal part of a bill. The body of all bills when drawn should be divided into sections, each section embracing as nearly as possible the separate parts of the enactment, and the sections when long should be divided into paragraphs. A study of the bills presented in the General Assembly of Iowa will show that sections appear in two different forms: one is a general declaration in positive terms of the legislative will, and the other is a similar statement with a qualification of the general declaration by use of a saving clause or exception.

Proviso, Saving Clause, Exception.—The use of the terms “proviso”, “saving clause”, and “exception” is somewhat confusing. Provisos are sections of a bill which like a saving clause or exception create an exception to the operation of the general expression of the legislative will. The only possible distinction seems to be in

the position of the proviso, exception, or saving clause. Provisos, furthermore, are often omitted at the time a bill is drawn and are added during the consideration of a bill. For this reason a different rule of interpretation has developed in the courts; and because of this fact, provisos, saving clauses, and exceptions should be used with care in framing a bill.¹³⁶ It has been said by the courts that where a saving clause in a statute is directly repugnant to the body of the act, and can not stand without rendering the act inconsistent and destructive of itself, the act must stand, and the saving clause be rejected; but where the proviso is directly repugnant to the body, the proviso should stand and be held a repeal of the body of the act since the proviso speaks the last intention of the legislature. There is, however, no good reason for this distinction and in practice it is sometimes difficult to tell whether a saving clause, an exception, or a proviso has been used.¹³⁷

Schedule.— A schedule is an addition to a bill which contains matter that can not be put conveniently into the body of the act. Blank forms, tables, and lists are generally placed in a schedule at the end of the bill. In other words, the schedule is used for enumerating details which do not touch the general policy of the law or concern directly the expressing of the legislative will. It is, however, as much a part of the bill as the sections which precede it. Schedules, although used a great deal in England and frequently found in American legislation, have not been used to any considerable extent by the General Assembly of Iowa.¹³⁸

Publication 'Clause.— The last part of a great many bills in this State is the publication clause. By the Con-

stitution all laws of a general nature take effect July 4th, unless otherwise provided. Special and local laws become operative thirty days after they are approved by the Governor, unless some other time has been designated. If it is desirable that an act should take effect before the time set by the Constitution or by law, the bill proposing such a law should contain a publication clause. The publication clause states that "this act, being deemed of immediate importance shall take effect and be in force from and after its publication"¹³⁹ in two newspapers, usually naming them, one of which must be published at the capital.¹⁴⁰

In the discussion in the preceding paragraphs on the drawing of bills no attempt has been made to present the technique of bill-drafting: for that the reader is referred to another part of this volume. Here the writer has attempted to describe briefly the essential parts and forms of bills which have been established in Iowa by the Constitution, statutes, rules of the legislature, and custom. Not what ought to be but what actually is has been the guiding principle in presenting the material of this section.

INTRODUCTION OF BILLS

After a bill has been drawn the next step is its presentation to the legislature — which is done under the order of business known as the introduction of bills. According to the Constitution of Iowa "bills may originate in either house".¹⁴¹ Every member of the House of Representatives and every member of the Senate has a right to present as many bills as he sees fit, subject of course to the rules of the House or Senate, as the case may be. In the Thirty-sixth General Assembly there were 650 bills

and joint resolutions introduced in the House, and 664 in the Senate.¹⁴²

One of the rules of both houses affecting the right of a member pertains to the time of introducing bills. In some States this matter is regulated by the Constitution; but in Iowa it has been left to the legislature itself, and so the rule may vary from session to session. In the last General Assembly no bill could be introduced in the Senate after March 30th — except committee bills introduced by “standing committees” — and no bill carrying an appropriation could be introduced after March 1st except by the committee on appropriations. Furthermore, the Senate required all bills appropriating money to “the state educational institutions and the institutions under the charge of the board of control”¹⁴³ to be introduced not later than February 15th.¹⁴⁴

The House had practically the same rules as the Senate. Here no bill could be introduced after March 10th except by a standing committee, and no appropriation bill could be presented after March 1st. Moreover, bills for appropriations for the State educational institutions, for institutions under the care of the State Board of Control, for the payment of claims against the State, and for the payment of the clerical help in the executive departments had to be introduced not later than February 15th.¹⁴⁵

The purpose of fixing time limits upon the introduction of bills is to get legislative matters before the members early in the session and to prevent congestion in the closing days of the session. In Iowa it has been found that certain measures like appropriation bills, and especially those providing for the maintenance of the State institutions, give rise to a great deal of discussion; and

so special time limits have been placed upon the introduction of such bills. But even with all of these rules the two branches of the General Assembly have found it necessary to resort to the use of a sifting committee in the closing days of each session in order to dispose of the large number of bills that are pressed for consideration.

In the United States the ceremony of presenting a bill to a legislative body is not accompanied with as much formality as in England. This is especially true in the State legislatures. In Iowa when a member wishes to introduce a bill he awaits the arrival of the order of business known as "The Introduction of Bills", and then rises in his place. Generally, he addresses the chair; and after obtaining recognition from the presiding officer he announces that he has a bill or says that he wishes to introduce a bill. In the meantime a page will have rushed to his desk and taking the bill from his hand hurriedly carried it to the chief clerk's desk in the House or to the secretary's desk in the Senate, where it is read by title and given its file number.¹⁴⁶

The introduction of bills has become a very mechanical affair in American legislative bodies. In the House of Representatives at Washington bills are no longer offered in the open house: they are laid informally upon the clerk's table.¹⁴⁷ This saves a vast amount of time. In the earlier days in Iowa the presentation of a bill was attended with more formality, when leave to introduce a measure had to be obtained from the house.¹⁴⁸ And it is still a rule of the Senate that "every bill shall be introduced on report of a committee, or by leave".¹⁴⁹ In practice, however, leave is always tacitly granted; so that there is really no more formality in connection with the introduction of bills in the Senate than in the House.

It has been noticed that the right to introduce bills belongs exclusively to members; but the mere fact that a member introduces a bill does not necessarily mean that it was drafted by him. Indeed, Representatives and Senators frequently introduce bills that have been drawn by others, and if they do not wish to be held responsible for the legislation proposed they explain that the bill is introduced "by request".¹⁵⁰ Thus it is possible for outsiders to draft bills and have them introduced: as a matter of fact a large number of the bills introduced at any session of the General Assembly are drawn by outsiders. It has been said that "parties wanting legislation are expected to call upon the honorable member with a bill already put into shape."¹⁵¹ When no explanation is offered at the time of introduction the member presenting a bill is presumed to approve of the legislation which it proposes. Sometimes measures come to be known by the name of the person introducing them — as the "Cosson Red Light Bill", or the "Johnson Road Bill".

Frequently a bill is introduced by two members of the legislature, that is, it is introduced into both branches of the legislature. The Senate and House files embracing the same bill are known as companion bills.¹⁵² When a companion bill passes one house and goes to the other it is customary to substitute it for the file which is its duplicate. There are occasions, however, when two members of the same house introduce a bill together; and sometimes one member introduces a bill for another member.¹⁵³

Members may introduce bills for committees as well as for themselves and "by request". Standing committees frequently bring in bills, when it is customary for the chairman to introduce the measure.¹⁵⁴ In the earlier days it was the practice to refer the different sections of

the Governor's message to the standing committees of the house with a view to having them prepare bills upon the subjects recommended or discussed in the message. But this practice is no longer followed: to-day committee bills are usually based upon some subject which has been referred to the committee in the form of a bill. Special committees are also appointed from time to time to draw bills; and the sifting committee may introduce a number of bills after its appointment.¹⁵⁵ Sometimes bills are introduced by joint committees, as the committee on retrenchment and reform or the joint committee on additional employees.¹⁵⁶

There is still another method by which bills may be introduced into either house of the General Assembly and that is by receiving a message from the other house. When a bill has passed one house it is sent to the other house by message. By receiving the message the house permits the introduction of the bill as much as if it had been presented by one of the members of that body, and it stands on an equal footing with bills introduced by any other method.

CUSTODY OF BILLS

After a bill has been introduced it remains in the custody of the chief clerk of the House or the secretary of the Senate until some action is taken upon it. Both houses make their recording officers "responsible for the custody and safekeeping of all bills, resolutions and other matters laid before or introduced into the house".¹⁵⁷ These officers endorse upon each bill the date of introduction, the file number to which it is entitled, or its receipt from the other house, and also the action taken by their respective bodies. When a bill is committed these officers deliver the bill to the chairman of the committee and take a

receipt for the same.¹⁵⁸ Thus the bill during committee consideration is in the actual possession of the chairman of the committee, but it remains in the constructive custody of the recording officer.

Only the custody of the "original bill", however, is entrusted to the chief clerk of the House and the secretary of the Senate. On the other hand, printed bills are in the custody of the sergeants-at-arms of the respective houses. The immediate custody of the printed bills in each house is in the hands of the file and bill clerks who have charge of the bill room in which are kept the printed bills: they are under the supervision of the sergeant-at-arms who is charged not to give out printed bills except to or upon the order of the presiding officer, a member, or a State officer.¹⁵⁹ This rule is not strictly enforced.

PRINTING OF BILLS

All bills, except legalizing bills, are upon their introduction printed for the use and information of the members, unless otherwise ordered. Legalizing bills are generally printed in the journal, although some such bills are never printed either before or after their enactment. The rules of the legislature provide that three hundred copies of each bill shall be printed for the use of both houses; at times additional numbers are printed upon the order of one of the houses. Occasionally one branch of the legislature orders a bill of the other branch printed in extra numbers for its own use; and frequently printed bills are distributed broadcast over the State upon the receipt of requests from constituents. The Johnson Road Bill, which was presented to the Thirty-sixth General Assembly, is a good example of the use of the printed bill for educational purposes outside the legislature. During the consideration of that measure the House of Repre-

sentatives authorized the printing of over one thousand copies of the bill, which were used by members to satisfy the demands that were made upon them for copies of the proposed law. Since the State printer is authorized by law to print anything ordered by either branch of the legislature, either the House or Senate may secure the printing of bills without the sanction of the other house.¹⁶⁰

RECEPTION AND REJECTION OF BILLS

When a bill is presented to a legislative body it may be either received or rejected; and after it has once been received it may be in effect rejected before it is put upon its passage. Bills may be rejected at the time of their introduction, not only because of their subject-matter but also because of their form, that is, because they do not comply with the rules of the legislature or the laws of the State in regard to form. This, however, is seldom done: indeed, bills are often received and sometimes even passed which do not comply with the statutory provisions in regard to form. Bills are sometimes rejected because they are presented after the time fixed for their introduction.¹⁶¹

There are several ways in which opposition to a bill may be expressed in a parliamentary sense. One method is to object to the first reading of a bill: in fact, this is the only method in Iowa actually provided by the rules of the House and Senate. When objection is made to the first reading the presiding officer puts the question in this form: "Shall this bill be rejected?"¹⁶² If the "ayes" carry, the bill is not received. In earlier days it was customary to make a motion to reject a bill before the first reading if there was opposition to it; and bills were often rejected in this way; but to-day action is seldom if ever taken under the rule just mentioned.¹⁶³ In other words,

it is a well established practice of the General Assembly to receive all the bills presented without question and allow them to run the gauntlet of legislative consideration.

Another method of objecting to a bill is to refuse to allow it to pass to the next stage of consideration, such as a second or third reading. The various steps of procedure are in theory taken on motion, so that by voting down a motion by which a bill would proceed to the next step its consideration would be discontinued. For example, in the General Assembly it is the practice to actually make the motion to give a bill its third reading — although other steps of procedure are taken in Iowa without the formal motion — and if that motion is voted down consideration of the bill ceases at that point. At some later time, however, the bill could be given its third reading and its consideration might thus be resumed. At one time in the legislative history of the State this method of manifesting objection to a bill was sometimes resorted to, but its use is no longer in vogue.¹⁶⁴

The common method of rejecting bills to-day in Iowa is by indefinite postponement. This action is usually taken upon the recommendation of the committee which has had the bill under consideration. Indeed, indefinite postponement has taken the place of most of the earlier methods of rejecting bills during the course of the proceedings upon them. Moreover, such a method of rejection works well with the committee system, since it gives every bill the chance of being considered in committee before it is turned down. Indefinite postponement in this State really grew out of the earlier practice of disposing of bills by laying them on the table. An abuse of the motion to table developed in Iowa: frequently a motion to

table a bill for some specific period was made, the date being fixed at a time when it was known the legislature would not be in session. In effect this was a motion to postpone indefinitely. The motion to table is now seldom used: only two bills were tabled in the Thirty-sixth General Assembly, and both of these were in the Senate. In these instances, however, the motion appeared in its correct form.¹⁶⁵

When a bill is indefinitely postponed it is as completely disposed of as though it had been rejected at the time of its introduction. Some conception of the use of this method may be gathered from an examination of the records of a recent session of the legislature. Thus in the Thirty-sixth General Assembly it appears that of the 650 bills and joint resolutions introduced in the House, 132 were indefinitely postponed by the House and 31 by the Senate; of the 664 bills and joint resolutions introduced in the Senate, 155 were indefinitely postponed by the Senate and 11 by the House. These facts mean that out of the total number of bills introduced in both houses of the legislature in 1915 over one-fourth were rejected during consideration by being indefinitely postponed. In other words, about as many bills were indefinitely postponed as were finally enacted into law.¹⁶⁶

There is still another method of rejecting a bill during its consideration, namely, by a motion to strike out the enacting clause. The use of this motion is very old in Iowa, but at the present time it is not often resorted to. It is still recognized, however, by the rules of both branches of the General Assembly. The enacting clause of only four bills was stricken out at the session of the legislature in 1915.¹⁶⁷

WITHDRAWAL OF BILLS

On account of the large number of bills which are introduced without consulting the different members, many of them have overlapping provisions. Thus it becomes expedient at times to withdraw a bill for the purpose of introducing another. This may be desirable on account of the form of the bill or some complication in the procedure. Bills are also often withdrawn for other reasons, which may be either political or personal with the author. At times alterations and amendments or the realization that it will not accomplish the purpose intended may prompt a member to withdraw a bill. Moreover, a bill may be withdrawn because of the predetermined attitude of the house or because a bill passed in the other branch of the legislature accomplishes the same purpose.

The withdrawal of a bill may take place at any time when there is no order concerning it before the house. Under ordinary conditions this must be accomplished by motion. If, however, a bill is in the hands of a committee it must first be withdrawn from the committee and then from the house — which may in Iowa be accomplished by the same motion. A common practice in the General Assembly, however, is to ask unanimous consent to withdraw a bill, which on account of the personal character of the request is seldom denied. In the Thirty-sixth General Assembly there were about sixty-five files withdrawn in each house.¹⁶⁸

RE-INTRODUCTION OF BILLS

It is a fundamental principle of common parliamentary law that when a bill has been introduced it is pending until finally removed from the consideration of the legislature. After a bill has been unfavorably disposed of it may again be brought before the General Assembly by

being re-introduced. A bill is pending until it has been rejected, withdrawn, indefinitely postponed, passed, or has failed to pass, that is, until some definite action has been taken upon it; but it may still be pending without being immediately before the assembly.¹⁶⁹

When a bill has been rejected it can not be re-introduced in the same house, unless some modification is made in its provisions; but the slightest change will usually be sufficient to allow a re-introduction without objection. If, however, a bill passes one house and is rejected by the other house that house may entertain the introduction of the same identical bill again since it was not originally introduced in that house. Nevertheless, it is doubtful if much attention is paid to this rule in American legislative bodies where bills are introduced in such great numbers that members seldom know what has and what has not been introduced. Another rule which is complementary to the one already stated is that when a bill has passed one branch of the legislature and is rejected by the other it can not be re-introduced in the originating branch without change.

By a joint rule of the General Assembly in Iowa it appears that when a bill passes one house and is rejected by the other, it can again be introduced in either house by giving five days notice and obtaining leave of a majority of the members of the house in which the same is to be re-introduced. This rule really provides a method of reconsideration by the two bodies acting together. It must at all times be remembered that the legislature is made up of two branches which act independently of each other in the consideration of bills: they coöperate in the manner mentioned above only when provision is made in their joint rules. Bills are rarely re-introduced in Iowa.¹⁷⁰

FIRST AND SECOND READING OF BILLS

When a bill is presented to either branch of the General Assembly by a member, a committee, or the other house it is handled substantially in the same manner, and passes in time through all the stages which legislative experience has established for the passing of bills. These steps of procedure were invented at an early period in parliamentary history when the art of reading and writing was not so generally known as it is to-day and when printing was little used. Although its exact origin is unknown, the practice of giving a bill three separate readings was developed during this period.¹⁷¹

The first reading was given for information: by a reading the members of the legislature received the text of a bill — there being no other method of obtaining this information. To-day, in the General Assembly of Iowa, within twenty-four hours after a bill is introduced every member of the legislature has a printed copy upon his desk. He keeps these printed copies in bill files which are provided by the State for him — one for the House files and one for the Senate files. These files have the appearance of an ordinary loose-leaf note book, with “House Bills” and “Senate Bills” printed upon the cover. Thus during the consideration of any bill, whether a House or Senate file, every member can turn to a printed copy of the proposed law. So that nowadays members of legislative bodies do not rely upon the first reading of a bill to get the text of the proposed measure, but upon the printed bill.¹⁷²

From the history of parliamentary practice it appears that after a bill had been given its first reading it was given a second reading, provided there was no objection. At this stage attention was given to the form as well as to

the substance of the bill. Debate ensued, and if the house was unable to get the bill in a satisfactory form it was referred to a committee. With the introduction and use of the printed bill for the information of the members of the legislature, the first and second readings have dwindled into mere forms — forms that have survived the period of their usefulness.¹⁷³

It is now a rule in both branches of the General Assembly of Iowa that “the first reading of a bill or joint resolution shall be for information” and if no objection is made “the bill or joint resolution shall go to its second reading without further questioning”. In practice bills introduced by members are usually read a first and second time and referred to a committee: they may be passed on file without immediate action, and later committed. Bills introduced by committees are read a first and second time and either referred to a committee, placed on the calendar, or passed on file for the time being. Bills introduced from the other house lie on the presiding officer’s table until the order of business known as the consideration of messages on the presiding officer’s table is reached, when they are taken up and given their first and second reading and either referred to a committee at once or passed on file until some later date, when they are referred. Substitute bills offered by either a member or a committee are frequently placed upon the calendar after their first and second reading, although they may be committed. It must be remembered, however, that every bill, whether introduced by a member, a committee, or by message from the other house, whether an original bill or a substitute bill, is under the rules of both branches of the legislature of Iowa given a first and second reading. But the same is not true of amendments.¹⁷⁴

When an amendment is offered by a member or presented in a committee report it is sent to the recording officer's desk by a page and read by him or his assistants. But there is no first reading in the sense in which bills are read a first time, and no second reading of any kind. The same practice prevails in connection with amendments from the other house: they are read before being considered by the recording officer, but there is no first and second reading in the parliamentary sense. Moreover, as a matter of theory there is no reason why amendments should not be read a first and second time the same as the original bill; under the early English practice this was the case. An amendment introduces new matter into a bill which has not been read a first and second time. Nowadays, when the printed bill is used there is, of course, no occasion for reading the original bill a first and second time. This is especially true when the present method of reading bills is considered.¹⁷⁵

In both branches of the legislature of Iowa provision is made for a special reading clerk who has a place at the desk of the chief recording officer. When a bill is brought to the desk, upon being introduced, it is passed to him and he reads first the title. At this stage the presiding officer announces the first reading of the bill. Then the reading clerk, after the announcement of the first reading by the presiding officer, reads the title over again, whereupon the second reading of the bill is announced. In every case the first and second reading amount to but one stage of procedure. After the second reading is announced the reading clerk gives the bill to the recording officer who retains it until some further action is taken under the next stage of procedure.

During the reading of a bill members and officers of

the house devote their time to other matters: the reading clerk alone is concerned with what the bill contains. The members are willing to wait until they have a printed copy in their bill file. Moreover, it would be difficult for anyone to get the gist of a bill from its first and second reading, even if attention was given to the reading clerk, for he reads in a rapid and monotonous manner. It is only necessary to observe a reading clerk at work for a few moments in either branch of the legislature to realize that the first and second reading of bills in Iowa is a mere matter of form.

COMMITMENT AND AMENDMENT OF BILLS

After a bill has received its second reading it is usually committed, that is, referred to a committee for further consideration. According to common parliamentary law, however, the measure may be considered at once, amended, engrossed, read a third time, and put upon its passage. In the Thirty-sixth General Assembly of Iowa every bill that was introduced by a member was referred to some committee for consideration. About one hundred files in the two houses together, which were introduced by committees, were not sent again to a committee but were allowed to go to the next stage of procedure. There were, also, a few bills that were introduced by message from the opposite house which were not committed, especially near the close of the session. Generally speaking, however, bills are always committed in Iowa: here the committee system is in vogue to the fullest extent.¹⁷⁶

Method of Commitment.—When a bill reaches the stage of commitment it is presumed to have been sanctioned to the extent that the legislative body wishes to see

the bill in its best possible form or to ascertain if the bill is in its best possible form. It would seem, then, that the purpose of commitment is to make possible the examination of the details of a bill and make any changes and additions that may be necessary to accomplish the purpose of the bill. At an earlier time this was the sole purpose of commitment, and it still remains an important object of that stage of procedure. At the same time the substance of bills is given as much consideration by committees to-day as is their form. In fact, a modern legislative committee passes as much upon the substance of a bill as does the legislature itself. Legislative experience has found it more expedient to entrust the examination of bills in the first instance to a few who understand the subject-matter or who, from their familiarity with the class of subjects with which the bill deals, are in a better position to understand the nature of the bill than to leave the matter to the whole house for examination. The very size of the two branches of the General Assembly makes such detailed examination of bills by the House and the Senate impracticable. Since, however, the workings of the committee system are specially considered in another part of this volume only those features of the system which touch the procedure upon the floor of the two houses of the legislature will be considered in this connection.¹⁷⁷

When a bill has been given its second reading according to a rule of the House, the speaker states "that it is ready for commitment, amendment or engrossment".¹⁷⁸ If the bill is ordered committed then the question arises as to whether the commitment shall be to a select or a standing committee, or to a committee of the whole house. When the House decides to consider the bill in committee

of the whole it fixes, according to the rules, the time of such consideration. As a matter of practice, however, bills are referred to the proper standing committee by the speaker at his discretion, unless there is objection or a motion to commit to some particular committee: often he acts upon the suggestion of the member introducing the bill. The commitment of some bills is specifically provided for by rule. For example, "all bills to appropriate money shall be referred to the appropriation committee, and all bills pertaining to the levy, assessment or collection of taxes shall be referred to the committee on ways and means."¹⁷⁹

The modern practice of committing bills is more fully covered by the Senate rules than by the House rules. Thus a rule of the Senate provides that "upon the second reading of a bill or joint resolution, the president shall refer the bill to an appropriate standing committee, unless otherwise ordered by the senate."¹⁸⁰ The Senate rules also provide for consideration in committee of the whole;¹⁸¹ but neither the House nor Senate of the Thirty-sixth General Assembly resolved itself into committee of the whole during the regular session in 1915. In the early days of legislative experience in Iowa every bill was considered in committee of the whole.¹⁸² At a later period only important measures were considered in this manner. The practice prevailed longer in the Senate than in the House; and it has been followed occasionally in recent years in the upper house.

Likewise it was the practice in the early days to refer nearly every bill to a select committee; but standing committees have now taken the place of select committees in both branches of the legislature.¹⁸³ Once in a while a select committee is still appointed for some particular pur-

pose. For example, in the last session of the legislature the House appointed a select committee to draw a substitute for a bill which proposed an act placing telephone companies under the control of the board of railroad commissioners. This committee was appointed after a vast number of amendments had been adopted and the bill was in very poor form.¹⁸⁴ In other words, the select committee was resorted to when the ordinary legislative machinery proved inadequate.

Select committees are at times used for other purposes. For example, the Senate referred the joint resolution on additional employees for the Thirty-sixth General Assembly to a special committee which had been appointed to investigate the charge of graft contained in the Governor's message.¹⁸⁵ For the most part, however, the standing committee is used in the Iowa legislature. The Senate rules, also, provide for the special commitment of appropriation bills. All appropriation bills are referred to the committee on appropriations the same as in the House; but no provision is made for the commitment of revenue bills to the committee on ways and means as is the case under the House rules.¹⁸⁶

Instructions to Committees.—In the early years of parliamentary practice in Iowa committees were frequently instructed: to-day they may be instructed in regard to a bill, but this practice is not resorted to unless there is some urgent reason or some unusual pressure. Such was the case in the Senate of the Thirty-sixth General Assembly when the committee on the suppression of intemperance, which appeared to be delaying action on temperance legislation, was instructed in regard to the temperance bills in its hands.¹⁸⁷ The rules of both houses

also contain instructions to committees. The committee on appropriations in the House is instructed by March 10th to prepare a schedule of all appropriations granted by the House up to that time and all appropriation bills yet to be considered. The Senate appropriation committee is charged with the completion of a similar schedule by the first Monday after March 15th.

Committees in Iowa, however, are given a wide latitude in the consideration of bills, ranging from the power to present a new bill to recommending indefinite postponement. As a result it has often been said that when a bill passes into the hands of a committee its fate becomes unknown, and if unfavorable action is taken in the committee those who were responsible can never be ascertained since no adequate records are kept of committee meetings. The committee system is more often criticized because of this lack of individual responsibility than for any other reason. In this connection it is important to note that the House of Representatives of the Thirty-fifth General Assembly took a significant step when it adopted the following rule:

When a motion which works a final disposition of a bill in the committee is up for adoption the roll of the committee shall be called and the yeas and nays entered in the minutes of the meeting.¹⁸⁸

The appropriation committee, however, was not compelled to observe this rule; and in 1915 the House of Representatives exempted also the judiciary committee.¹⁸⁹ Moreover, the House of Representatives took a further step in advance when, in 1915, it required the chairmen of committees to see that the records required of committees were properly kept and deposited with the chief clerk of

the House at the end of the session.¹⁹⁰ The upper house has been more conservative in these matters.

In the House of Representatives the chairman must notify the author of a bill of the time at which his measure will be considered in committee, in order that he may confer with the committee during the consideration of the same. No one, however, but members of the committee can be present when final action is taken on a bill. In the House chairmen are also required to place a notice of committee meetings on each member's desk. The Senate gives the chairmen only the right to announce meetings just before the daily adjournment. In each house there is a bulletin board on which the announcement of committee meetings may also be made.¹⁹¹

Reports of Committees.—One of the most important features of the committee system is the consideration of committee reports. Although the legislative body is willing in the first instance to turn the consideration of a bill over to a committee, it desires to review the work of the committee and either approve it, or disapprove it, or supplement it. All this is accomplished in the consideration of committee reports.

To get a report from a committee is sometimes a difficult matter; and so it is often said that the fate of a bill under modern legislative procedure rests with the committee to which it is referred. In Iowa, however, it would now seem possible for any member of the legislature to force a committee of his own house to report after a certain time. By the rules of the Senate of the Thirty-sixth General Assembly every committee must "report back all bills in its hands, within fifteen days after the order of reference, unless a different time is granted by vote of the

senate.”¹⁹² The appropriation committee is not required to comply with the provisions of this rule.

The House of Representatives has practically the same rule, but makes ten instead of fifteen days the time limit. A time limit rule for committee consideration in the House is very old, having originated in 1886. At that time the rule was proposed in both branches of the legislature, but it was adopted only by the House. The original rule applied to all committees, but the House of the Twenty-second General Assembly exempted the appropriations committee and cut the time to seven days. Then in 1890 the House restored the ten day provision, in which form it has remained until the present day. On the other hand, the Senate rule placing a time limit upon committee consideration is very recent, having been adopted on March 16, 1915. The adoption of this rule in the upper house was probably hastened by the provoking delays on the part of the committee on the suppression of intemperance.¹⁹³

Although appropriation committees in both houses are exempt from the above rules it is not to be presumed that they are uncontrolled. Indeed, the appropriation committee in the House must report all bills in its hands not later than March 10th; and Senate bills received by this House committee after March 10th must be reported to the House within three days. In the Senate the appropriation committee is required to report back not later than the first Monday after March 15th all bills in its hands, and after the third legislative day prior to said Monday it must report on all House bills referred to it within three days.¹⁹⁴

In order to enforce these various rules regulating the time a bill may be retained by a committee the chairman

or clerk of each committee in both houses, except of the appropriation committees, is required to endorse upon the back of each bill the date of reference. This makes possible the determination of the time which the committee has for the consideration of the bill. But making provision for the enforcement of rules and really enforcing them are two different matters. As a matter of practice none of the above mentioned rules appear to have been very rigidly enforced. In the House of the Thirty-sixth General Assembly there were over five hundred House and Senate files retained by committees for a period longer than ten days, while only a few over two hundred and sixty were retained less than ten days. The Senate committees were not limited prior to March 16th; after that date they lived up to the rule much better than did the House committees. Following the adoption of the time limit rule about one hundred and fifty House and Senate files were retained by Senate committees over fifteen days, while about three hundred and eighty files were kept less than fifteen days. Before the adoption of the rule the Senate committees did not retain bills any longer than did the House committees. Out of two hundred and ten bills referred to Senate committees before March 16th about ninety were retained less than fifteen days, while only about one hundred and twenty were kept beyond the fifteen day period. The rules regulating the appropriation committees were about as well enforced in the last General Assembly as were the rules governing other committees, that is, they were really not enforced at all.¹⁹⁵

Time limit rules were not even enforced when attention was called to them by some member. Of four resolutions in the House asking for reports on bills which had

been retained longer than ten days, only one was adopted — although in each instance the bill had been retained by the committee several weeks. In the Senate there was one instance in which the presiding officer ruled on a point of order that a committee must report a bill which it had retained longer than fifteen days. Outside of these instances there appears to have been no attempt to enforce the rules in either branch of the legislature. When committees reported within the time limits they evidently did so at their own pleasure.¹⁹⁶

The reports of committees follow an established form which can be found in any journal of the General Assembly. Committee reports begin with the name of the committee and the title of the bill referred, they proceed with a statement that the committee has had the same under consideration, and close with the committee's recommendation. There are four common endings for committee reports, namely, "recommend the same do pass", "recommend the same be indefinitely postponed", "recommend the same be amended as follows; and when so amended the bill do pass", and "without recommendation"—forms that are self-explanatory. In addition to these common forms of reports there are certain other forms that are occasionally used. Sometimes a committee recommends that the author be permitted to withdraw the bill on account of some other bill covering the matter; and very often a committee submits a substitute bill in its report. A Senate rule requires all reports of committees on bills or resolutions to be made in duplicate and to be accompanied with the original bill or resolution to which the report relates. There seems to be no House rule covering the point, although the same practice is followed.¹⁹⁷

Committees do not always agree, in which case a mi-

nority report may be submitted.¹⁹⁸ Sometimes it is possible to get the minority report substituted for the majority report. By a House rule minority reports are required to be printed in the journal:¹⁹⁹ generally they are so printed in the Senate, although there is no rule to that effect.

When a committee reports, the report may be considered at once and either adopted or rejected, or it may be passed on file, that is, laid over for the time being and later taken up and considered. In Iowa it appears that committee reports are not usually rejected outright, but are disposed of in some indirect way. When a committee reports in favor of indefinite postponement the report is usually acted upon at once, and in most cases the report is adopted. Such action on the part of the General Assembly disposes of the bill as effectively as if it was voted down. Upon a recommendation for indefinite postponement, however, the bill may be referred to another committee or placed on the calendar either by motion or unanimous consent. It may, also, be immediately considered, amended, and placed upon its passage. If a committee report takes some form of recommendation for passage, it is quite common to pass the report on file. After the report recommending passage is taken up and adopted the bill is placed upon the calendar, and is ready for consideration by the house.

Consideration of Amendments.—A common criticism of the committee system is that no consideration is given to a bill on the floor of the house and that everything depends upon committee action; but this criticism is not fully sustained by the practice of Iowa legislatures. Indeed, the journals of the recent sessions of the General

Assembly show that a large number of amendments to bills are offered from the floor of the houses after the consideration of committee amendments. When a bill is taken up in its regular course on the calendar the committee amendments are considered first; and often these amendments are amended before being adopted. After the committee amendments have been disposed of members of the house are at liberty to offer other amendments. In the Senate of the Thirty-sixth General Assembly more bills were amended than those that had no committee recommendations than those that had amendments proposed by committees; and a number of bills to which there were proposed committee amendments were rejected. The same thing was true of the consideration of bills in the House, and of the consideration of House files in the Senate and Senate files in the House. This suggests that the General Assembly of Iowa is still to a certain extent a deliberative body.

The presentation of amendments by members, as mentioned in the preceding paragraph, is somewhat difficult in that the only way to get such an amendment before the house is to have it printed or read by the clerk. Since a bill is rarely considered on the same day on which the committee reports, especially during the early part of the session, the amendments proposed by committees are printed in the journal before the consideration of the bill is reached and thus they are before every member in printed form before they are brought up. But the same is not true of amendments offered by members, since they can not be offered until the bill is brought up for consideration.

If a member desires to get his amendment in printed form before it is voted upon he may proceed in one of

several ways. First, he may anticipate the consideration of a bill and file his amendment in advance any time before the day on which the bill is likely to be considered: he may do this when no other business is before the house or by obtaining unanimous consent — the latter being the customary way. In the Senate this will entitle him to have his amendments thus filed printed in the journal before the day of considering the bill. Another way of accomplishing the same thing is to obtain unanimous consent to have the amendments printed in the journal. Still a third way is to wait until the bill is called up and then, after offering an amendment, to move that action be deferred until some future date — in other words, to make a special order of the bill. It frequently happens that when a large number of amendments are presented from the floor some member who has offered no amendment will make the motion for a special order so that all may have the opportunity of seeing the amendments in printed form. Indeed, it is very difficult to vote intelligently upon an amendment when one has only a printed bill before him and must rely upon the reading clerk to get the proposed change; and yet, scores of amendments are adopted in this way. In fact, it is the way amendments are generally adopted unless they have been printed according to one of the methods discussed above.

In connection with amendments which appear in the journals both before and after they are adopted, it is interesting to note a practice in the General Assembly which makes these printed amendments available to members. Each morning when the journals of the preceding day are distributed an extra copy is placed on the desk of each member, and in most instances the clerks clip these amendments out and stick them on the proper bills in the bill files.

Re-commitment.—Occasionally the assembly is not willing to consider a measure when it comes from the committee. In that event the bill may be re-committed, that is, referred again to a committee. It may be referred to the same committee or to a different committee. At times a committee makes the recommendation that a bill which it has had under consideration be referred to some other committee. Sometimes bills, either by unanimous consent or by motion, are withdrawn from one committee and referred to another.²⁰⁰

A motion to re-commit may lead to a great deal of diversity of opinion as to the committee to which the bill should go. In the Senate of the Thirty-sixth General Assembly when the committee on penitentiaries and pardons reported the bill on the compensation for officers and employees of the reformatory at Anamosa there were motions made to re-commit it to the committee on appropriations, the committee on the Board of Control, the committee on retrenchment and reform, and the committee on penitentiaries and pardons. It was finally referred to the committee on appropriations.²⁰¹

ENGROSSMENT AND THIRD READING OF BILLS

After a bill has been considered in the house and put in the form desired by the members it is ready for engrossment and a third reading. Formerly engrossment and a third reading were two distinct stages, but in Iowa they now constitute but a single stage. The purpose of engrossment and a third reading is to incorporate the changes that have been made in a bill by the action of the house and then to read the bill in its final form before it is placed upon its passage. Engrossment in Parliament has been displaced by printing, that is, after a bill has

passed the house in which it originated it is printed in the form in which it was passed. This second printing of the bill takes the place of engrossment: it comes after the third reading and passage. In Congress engrossment is still preserved, but it is combined with the third reading so that when this stage is reached there is always a motion that the bill be engrossed and read a third time. Thereupon the bill is read a third time by the reading of its title. If any member demands the reading in full the bill must be laid aside until it can be engrossed.²⁰²

In the General Assembly of Iowa technical engrossment has also been virtually abandoned. Only four bills were ordered to be engrossed in the House in 1907, and only one each in the sessions of 1906, 1904, and 1902. In the Senate no bill has been ordered to be technically engrossed since 1904 and at that session only one bill was engrossed, as was the case at the preceding session.²⁰³ Since 1907 no bills have been engrossed in either house in a technical sense, but the motion at this stage has been that the rules be suspended and "the bill be considered engrossed, and read a third time".²⁰⁴ When, however, this motion is decided in the negative it is necessary to have the bill engrossed. This is accomplished by a motion which refers it to the committee on engrossed bills. After such an order the house must wait until the committee reports that it has found the bill properly engrossed before it can continue the consideration of the bill.²⁰⁵ After engrossment has been ordered dispensed with or the bill has been properly engrossed, then the reading clerk reads the bill at length. The third reading is the only way in which a bill is ever presented in its final form before a vote is taken upon it. Like the first and second reading the third reading of bills has become a mere matter of form in this State.

This slack method of reading bills has raised the legal question of what constitutes a reading; and it is now well settled that to read by title is considered a reading of a bill, unless it be required by the Constitution to be read in full.²⁰⁶ The Constitution of Iowa makes no requirements in regard to the reading of bills, but provides that "the question upon the final passage [of a bill] shall be taken immediately upon its last reading".²⁰⁷ Legislators have differed upon the significance of this provision of the Constitution. A joint committee of the legislature in 1897 came to the following conclusion:

The question under the above provision is whether section 17 is mandatory or simply directory. If mandatory, then clearly the Legislature has no power to waive it or to neglect to carry out its provisions; if it is doubtful as to whether the courts would construe it, so far as it relates to a full reading of a bill, as mandatory or merely directory, then the wise, prudent and careful legislator would resolve the doubt in such way as to avoid the question of the constitutionality of the law being raised under this section, and we think should insist on a full reading of a bill as provided by the Constitution.²⁰⁸

In practice the reading clerk goes through the form of giving a bill its full reading. Before this reading a kind of engrossing is done by the recording officer who inserts all changes in the original bill. A House rule provides that all bills when engrossed shall be written with a "black record ribbon".²⁰⁹ There is also a committee on engrossments in each house of the General Assembly whose duty it is to compare the engrossed bill with the original bill, together with the amendments made to it, to see that it has been correctly engrossed. In Iowa, since bills are no longer engrossed, in the more technical sense, it appears from the journals that this committee no longer functions; but there is no reason why it should not

still report, since the bill as engrossed by the recording officer is the bill that goes to the other house and its correctness is a matter of great importance.

When a bill goes to the other house it is already in its engrossed form; accordingly amendments made to it are not engrossed in the bill but are attached to the engrossed copy and sent back to the originating house. If they are adopted they are incorporated later under another stage of procedure known as enrollment.

Formerly a bill was debated upon its merits and could be amended or committed when an order of engrossment was proposed, but that practice no longer prevails in Iowa. A rule of the House specifically provides that "no amendment, unless by way of correcting an error or omission, shall be received to any bill on its third reading, and no debate shall be allowed on the same."²¹⁰ The same policy is followed in the Senate, although a rule provides that amendments may be proposed after engrossment by obtaining unanimous consent.²¹¹ In the Senate under the rules a bill can only be committed before its third reading;²¹² in the House the rule allows commitment any time before its passage.²¹³ As a matter of practice the House seldom if ever commits a bill after its third reading. Indeed, the Constitution prohibits such a practice.

PASSAGE OF BILLS

After a bill has been given a third reading, the next and last step in its actual adoption is the vote upon its passage. According to the earlier procedure a bill could be debated on its merits when put upon its passage; but this practice no longer prevails. A Senate rule provides that a "vote on its final passage shall be immediately taken [after the third reading] without debate."²¹⁴ The

House follows a similar practice, which, as a matter of fact, is a constitutional requirement. The provision of the Constitution reads: "the question upon the final passage shall be taken immediately upon its last reading".²¹⁵

The Constitution of Iowa further prescribes the number of votes necessary for the passage of a bill: "No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly".²¹⁶ This provision means that a majority of the elected members in each house is necessary for the passage of a bill — not a majority of those present, which is the case in Congress. The Constitution also provides that "a majority of each house shall constitute a quorum to transact business".²¹⁷ If just a quorum is present, everyone would have to vote in favor of a bill in order to pass it. Furthermore, it is necessary under the Constitution to take the vote upon a bill by yeas and nays, that is, by calling the roll and recording each member's vote. The yeas and nays must also be recorded in the journal of each house in order to make the passage of a bill valid.²¹⁸

If a bill receives a constitutional majority when put upon its passage then its title is agreed to. It is important that the title be properly expressed, since the Constitution prescribes that "every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."²¹⁹ During the course of amendment a bill may be so materially changed that the original title no longer expresses the subject; or it sometimes happens that the original title is not in the best form. So it is the practice in both branches

of the legislature to agree to the title after the bill is passed. Very frequently amendments to titles are offered and adopted at this point.²²⁰

The bill, having finally been adopted, is presented to the recording officer for his signature according to the joint rules; whereupon he signs it and endorses upon it the date of passage.²²¹

AGREEMENT BETWEEN THE HOUSES ON BILLS

It must always be kept in mind that most modern legislative bodies are made up of two branches and that it is necessary for both houses to pass a bill in exactly the same form in order that it may become a law. This often gives rise to difficulties and complications: it led to the development of many technical rules governing the action between the two branches of Parliament. These rules have been largely modified even in England: they never were closely adhered to in the United States. In Iowa the parliamentary relations between the houses have been simplified by the joint rules of the General Assembly.

An examination of any of the journals of the legislature of Iowa will show that the House and Senate often find it impossible to agree upon the form of a bill, which is defeated for that reason. When, however, one house passes a bill in exactly the same form in which it passed the other house the proceedings between the two branches of the legislature with reference to that particular bill are at an end. The bill is then returned to the originating house by message. It does not again come before the originating house, but remains in the custody of the recording officer until it is enrolled by the enrolling clerk and presented to the presiding officers for their signatures.

The method just described is the simplest way in which the two houses reach an agreement on a bill. They may reach a disagreement in as simple a manner. Thus, when one house fails to pass or indefinitely postpones a bill received from the other house the two houses have reached a disagreement and the proceedings between them upon that particular bill are at an end, unless the measure is re-introduced as provided by the joint rules of the General Assembly. There are, however, other ways in which the branches of a legislative body may reach an agreement or a disagreement which are not so easy to follow.

Frequently one house passes a bill, received from the other, with some modifications or changes — that is, the bill is passed with an amendment or amendments. In such a case there is only a conditional agreement between the two branches of the legislature: that is to say, one house has agreed to the action of the other house upon condition that the originating house accept certain changes made by the amending house.

Again, from a conditional agreement on the part of one house complicated situations may sometimes arise. When a bill is amended and returned to the originating house, with the amendments appended to the bill and authenticated by the signature of the recording officer informing the originating house of the action taken and asking it to concur in the changes made, there are at least three situations that may arise. First, the proposed amendments may be considered by a committee or the house may act directly upon them. When the house acts it considers each amendment separately and it may concur, concur with an amendment, or refuse to concur. If the originating house concurs in all of the amendments

without any changes, the proceedings between the two branches are at an end and the bill passes to the next stage of procedure. But if the originating house refuses to concur in any one of the amendments, or concurs in one or more with an amendment, then the bill is returned to the house making the original amendment. This leads to either the second or third situation that may arise.²²²

The second situation arises when a bill is returned to the amending house without the concurrence of the originating house in all of the amendments previously adopted by the amending house. At this point the bill goes to the presiding officer's table where it remains until taken up under the proper order of business. The amending house may then either insist on or recede from any or all of its amendments which have not been concurred in by the other house. If it recedes from all amendments to which the other house has not agreed, the proceedings between the two houses are at an end; but if it insists on one or more of these amendments the two branches of the legislature have reached a temporary disagreement and a conference is necessary.²²³

The third situation arises when a bill is returned to the amending house with a conditional concurrence of the originating house, that is, with amendments to one or more of the amendments adopted by the amending house. Under the joint rules of the General Assembly the amending house at this point may either concur or refuse to concur in any one of the amendments made to the amendments already adopted by it. According to common parliamentary law it might also concur with an amendment to any one of the amendments made to the amendments already adopted by it. There is some question, however, whether the joint rules, by omitting this reference to

common parliamentary law, preclude such a method of action in Iowa. The question is unimportant, however, since during the last seven sessions of the General Assembly no amendment has been made to any of the amendments of the amending house.²²⁴

Undoubtedly an amendment may be made to the amendments of the amending house either by the authority of the joint rules of the legislature or by the common parliamentary law of the land. And if such an amendment is made and the amending house concurs in the action taken then the proceedings are at an end, but if it refuses to concur with any of the amendments made to its own amendments the bill must be returned to the originating house to give that body an opportunity to recede from its amendments to the amendments of the amending house. When a bill is so returned to the originating house, which then refuses to recede from any of its amendments not agreed to by the amending house, a conference is necessary.²²⁵

Unless otherwise provided a conference committee in Iowa consists of four members from each house. It is not a "heterogeneous body, acting as one committee, but two committees, each of which acts by a majority." In early times conferences were only indulged in at the pleasure of the houses; but now, as has been pointed out, one house may force the other house to hold a conference under the joint rules by insisting upon one or more of its amendments. When a house insists upon an amendment it appoints a committee on conference and notifies the other house of its action by message and asks for a committee on conference. Upon the receipt of such a message the other house under the proper order of business appoints a committee on conference.²²⁶

After a committee on conference has met at some convenient time and conferred freely, each branch of the committee or a majority of it reports by its chairman the results of the conference to the house. An agreeing report is made in writing and is signed in duplicate by all the members of the committee, or by a majority of those of each house agreeing to it. One of the duplicate reports is retained by the committee from each house.²²⁷

An agreeing report of a conference committee is first presented, together with the bill, to the house refusing to concur, and there acted upon. When a conference committee disagrees the bill and papers pertaining to it are returned to the house insisting on the amendment where they remain. When a conference committee reports, the matter may be considered at once, passed on file, or referred to a committee. In practice it is usually disposed of at once.

A conference committee may recommend in its report that the house insisting do recede, or that the house refusing to concur do concur. Furthermore, it may propose new amendments or that old ones be stricken out. Indeed, it may even report a substitute bill. Since the whole object of a conference is to reach an agreement and thus prevent the defeat of the legislation under consideration and since both branches of the legislature are equally represented, a conference committee may go very far in considering the merits of the bill and in recommending changes and alterations that are likely to be acceptable to both houses.

The report of a conference committee may or may not be adopted. In case it is adopted by both houses the bill is passed in conformity with the recommendations of the committee and the proceedings on the bill are ter-

minated. If the report is not adopted by both houses, or if the committee is unable to reach an agreement, a new committee may be appointed at the pleasure of the two houses.²²⁸ A second conference, however, is rare. A disagreement of a conference committee or the rejection of the report of a conference committee by either house usually means the defeat of the bill.

Conferences between the houses are not common in Iowa. Throughout the session of the Thirty-sixth General Assembly there were only five conference committees appointed. These were for conferences on the appropriation bill for the Iowa Soldiers' Orphans' Home, on the joint resolution approving plans for buildings at educational institutions, on the bill making provision for recovery by a woman for personal injuries, and on the bill for an appropriation for institutions under the Board of Control. The reports of all these conference committees were adopted. The only other conference of the session was on the bill in regard to the formation of a county board of education; and in this instance the House refused to accept a conference report which proposed a substitute bill.²²⁹

There are some special rules regulating agreements between the two branches of the General Assembly that should be remembered. First, a motion to amend an amendment made by the opposite house takes precedence over the motion to concur in that amendment; and a motion to recede takes precedence over a motion to insist. Moreover, when a motion to insist is lost it is deemed to be a receding without further action on the part of the house and is so entered in the journal. By inference it would seem that when a motion to recede is voted in the negative that it should be entered on the record as a mo-

ever, seems to be done by the enrolling clerks. The committee on enrolled bills of the originating house reports only to that house, while the joint committee reports to both houses. The committees on enrolled bills report at any time when no one is addressing the chair. After this committee has made its report the bill is signed, first by the speaker of the House and then by the president of the Senate. These signatures are prescribed by the Constitution for the legal authentication of the legislative action expressed in the bill. Moreover, it is required that the signature of the presiding officer shall be affixed in the presence of the house. After signing a bill the presiding officer always announces that he has signed such and such a file in the presence of the house. Bills are sometimes signed by the president or speaker *pro tem*, although the Constitution provides that the bill shall be signed by the "Speaker and President".²³⁵

After a bill is signed in each house it is presented by the committee on enrolled bills of the originating house to the Governor, for his approval. The committee on enrolled bills reports the date of presentation to the originating house and the fact is entered upon the journal, thus making it possible to compute the length of time that the Governor retains a bill.²³⁶

EXECUTIVE APPROVAL OF BILLS

Although provisions concerning the executive approval of a bill are found chiefly in detail in the Constitution, there are some statutory enactments upon the subject which should not be overlooked.

When the Governor approves a bill he signs it and dates it and, through his secretary, communicates the fact to the originating house, where such fact is entered upon

the journal. If the Governor disapproves he returns the bill to the originating house along with his objections. Upon their receipt such objections are read in the originating house and entered upon the journal; and the house proceeds to reconsider the bill. In this reconsideration the bill may be disposed of at once, or it may be referred to a committee. If, after a reconsideration the bill passes the legislature by a majority of two-thirds of the members of each house upon a yea and nay vote, the bill becomes a law notwithstanding the Governor's objections. Furthermore, if the Governor retains a bill more than three days, Sundays excepted, after it is presented to him and while the legislature is still in session, it becomes a law without his signature. When the legislature adjourns all bills which have been presented within the last three days may be retained by the Governor for thirty days, at the end of which period they must be filed with the Secretary of State with his approval or objections as the case may be.²³⁷

Certain forms have been provided by the legislature for promulgating acts disapproved by the Governor. When a bill is returned with the Governor's objection and is repassed as provided by the Constitution, the presiding officer of each house signs the following statement at the end of the enrolled bill:

This bill, having been returned by the governor, with his objections, to the house in which it originated, and, after reconsideration, having again passed both houses by yeas and nays by a vote of two-thirds of the members of each house, has become a law
this day of²³⁸

When a bill is retained longer than three days by the Governor the Secretary of State authenticates it by endorsing on the enrolled bill the following statement:

This bill, having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this day of²³⁹

Occasionally it becomes advisable to recall a bill from the Governor, either to correct it or to give it further consideration. This is done in Iowa by an ordinary motion. When a bill is returned it is necessary to reconsider first the vote by which it passed the house and then reconsider the vote by which it passed to its third reading. The bill is then before the house for its consideration, and may be amended or disposed of in any manner in which the assembly sees fit.²⁴⁰

CUSTODY AND PUBLICATION OF ACTS

The original enrolled bills are filed with the Secretary of State for safe-keeping, and become the source of authority for the statute law of the State.²⁴¹ Any person desiring a copy of any statute law may secure a certified copy of the enrolled act from the Secretary of State by paying the legal fee.

The Constitution of the State provides the time at which acts take effect: all general and public acts take effect on July 4th unless the General Assembly otherwise provides in the law itself. Private acts take effect thirty days after they are approved by the Governor, unless the legislature makes some other provision. Acts passed at special sessions take effect ninety days after adjournment. The Constitution authorizes the legislature to provide for the immediate operation of all acts which they think of especial importance, by publication in certain newspapers.²⁴²

Acts which are to take effect by publication must appear in at least two or more papers, one of which must be

published at the seat of government. The papers in which such a law is to be published are specified in the publication clause of the act. When either or both papers so specified fail or refuse to publish the law the Secretary of State may designate another paper or papers in which the publication shall be made; and in case the papers are not designated in the act when passed the Secretary of State may designate them.²⁴³

When an act is so published it takes effect from and after the date of its last publication. The Secretary of State endorses on the enrolled bill a certificate stating in what papers the act was published and the date of the last publication in each of them. This certificate becomes presumptive evidence of the facts therein stated. Copies of every act of a general nature which takes effect by publication are mailed by the Secretary of State to the clerk of the district court in each county, where they are kept for six months or until the laws are officially published. Here any one may have access to them, and through the agency of the district court obtain information concerning the general laws of the State which take effect prior to July 4th and before their publication by the State.²⁴⁴

SPECIAL FEATURES CONNECTED WITH THE PASSAGE OF BILLS

There are certain features of statute law-making which deserve special consideration in this connection. These features either do not constitute a necessary part of the procedure upon a bill at any of the regular stages in its passage, or they are quite independent of the stages through which the bill passes; at the same time they are too important to be wholly overlooked. They concern such matters as motions, resolutions, debate, voting, order of business, reconsideration, and related subjects.

Motions.— Attention has already been called to the fact that the General Assembly of Iowa is a deliberative body and therefore governed by the ordinary rules of procedure for such bodies. The common form by which a deliberative body expresses its will is by motions, of which there are various classes — principal, privileged, incidental, subsidiary, and supplementary. It is not necessary in this connection, however, to discuss these various classes or to expound the common parliamentary law of motions: such an exposition may be found in the manuals adopted by both branches of the legislature as the rules of authority in the respective houses. But the use of motions is so common that it will be helpful to notice some of the practices in regard to their use by the General Assembly of Iowa.

Motions are used in the legislature of Iowa primarily in connection with the consideration and passage of bills: in fact a bill is never considered except upon motion. This is true even when a bill is next on the calendar and unanimous consent or a suspension of the rules would be necessary to avoid the consideration of the bill at that point. Even bills that have been made a special order are taken up, when the time arrives, upon motion; and, as a matter of fact, when unanimous consent is asked to take up a bill out of its order it is really taken up on motion. Motions, then, are important from the very fact that their use touches everything the legislature does in the enacting of laws. Furthermore, some general facts in connection with motions are essential to the understanding of statute law-making.

In the House "every motion, except subsidiary or incidental motions, shall be reduced to writing if the speaker or any member desires it, but this exception shall not

apply to motions to amend.”²⁴⁵ In other words motions to amend must always be in writing and principal motions may be required, either by the speaker or some member, to be in writing. All other motions can be made from the floor. A principal motion is defined as “any original and independent proposition, submitted to the assembly for its action when no formal proposition is before it”.²⁴⁶ All other propositions, that is, those that are subsidiary, incidental, or supplementary to some other proposition are secondary motions and can not be required to be reduced to writing. The rule may be stated thus: when a motion is designed to dispose of or act upon a principal motion it is a secondary motion and may be made orally in the House — except the motion to amend, which must be in writing. In practice principal motions are presented orally or in writing at the choice of the mover. Members are seldom if ever required to reduce their motions to writing.

In the Senate practically the same rules prevail. A Senate rule provides that “all motions (except to adjourn, postpone or commit) shall be reduced to writing, if required by any member”.²⁴⁷ In practice motions to amend are always in writing and many other motions are presented in written form at the choice of the mover.

It is a fundamental principle of common parliamentary law that every motion shall be seconded, and it is so provided by the rules of the House; but in practice only a few motions like the previous question and reconsideration are ever seconded. In the Senate motions are seldom, if ever, seconded.

Resolutions.—Resolutions have been discussed at length in a preceding section,²⁴⁸ but some additional at-

tention should be given to simple and concurrent resolutions since they are nothing more than formal motions — motions put in a set form of words. Joint resolutions are not here considered because they are handled as bills, not as motions. Resolutions are generally offered in writing and may be presented either by members or committees. Under the House rule they must lie upon the table for one day before being taken up. In the Senate resolutions lie over one legislative day if there is objection to immediate consideration, otherwise they are entitled to be considered at once.²⁴⁹

Debate.— A great deal has been written about debate in American legislative bodies. Its ineffectiveness and the loss of time occasioned by it have often been pointed out. Many have said that American legislative bodies have ceased to be deliberative — real debate no longer existing in them. To these general observations it might be added that in Iowa the most casual observer would notice that there is very little effective debate in either branch of the General Assembly. There is a great deal of discussion in both bodies, but only on occasions is the debate ever followed by the whole house. Furthermore, upon the more important measures the members are reached outside the legislative hall before the bill has come up for debate, and no amount of discussion is likely to change their vote, since their minds, in most cases, have been already made up. Upon the less important measures, however, members will follow the brief remarks of the member who has the bill in charge, especially where they have given the matter no thought and want to cast an intelligent vote or be able to explain their vote after it is cast. With minor measures, nevertheless, more

depends upon the person handling the proposition than upon its merits. Thus debate in these cases becomes a matter of information rather than of argumentation.

Although debate may be often ineffective and generally useless in the General Assembly, the two branches have found it expedient to regulate the matter with rules. Thus before engaging in debate one must obtain recognition from the chair, confine himself to the question under consideration, and avoid personalities. In the House he may speak only once, unless given special permission, and even then he can not speak more than a second time until all who desire to do so have spoken once upon the question. Furthermore, when the debate is on a bill after its second reading, that is, during its real consideration by the House, a member can not speak longer than fifteen minutes without leave. When a member is unable to finish his remarks within the allotted time it is customary to grant him a few moments in which to close. This may be done by motion or by unanimous consent. When debate is under way in the House only the following motions can be made: the motion to adjourn, to lay on the table, to postpone to a day certain, to commit or amend, to postpone indefinitely, and the previous question. Nor can one member interrupt another to make any of these motions: he must obtain recognition from the presiding officer before stating his motion. When the motions to postpone or commit have once been made and decided they can not again be made on the same day or during the same stage of procedure on the bill.²⁵⁰

The Senate has no standing rule limiting the time of debate. In fact, it is necessary to suspend the rules or amend them in order to limit the debate in the upper branch of the legislature. Near the close of the session

the Senate does sometimes limit debate by amending its rules. This was the case in the Thirty-sixth General Assembly when on April 5th a resolution was adopted limiting each member to five minutes and giving to members in charge ten minutes to close. Of course after April 5th the Senate could by unanimous consent or motion extend the time of any member. The Senate, moreover, has the same rules as the House in regard to making motions during debate.²⁵¹

In addition to the time limit set upon debate by the rules there is another method of limiting debate upon each individual proposition, namely, by moving the previous question. The rules governing the use of the previous question are found in the manuals stating the common parliamentary law of the land; but so important is this motion and so common is its use that both branches of the General Assembly have seen fit to adopt special rules regulating its use. The House rule provides that whenever a member moves the previous question he must state specifically whether he is moving the previous question on the main question and amendments or on the amendments only. The effect of the motion when carried by a majority of those present is to bring the house to a direct vote upon the question to which the motion applied, except that when the motion applies to the main question the member in charge has ten minutes to close and when the motion applies to amendments only the member in charge has five minutes to close before the vote is taken.²⁵² In the Senate no such distinction between the bill and the amendments is made. There the rule is drawn for the main question only, and the member in charge is given ten minutes to close. When the previous question is ordered in the Senate it closes debate upon the amendments and

the main question at the same time "unless otherwise indicated by the motion and ordered by the senate".²⁵³

In either house when the motion fails the body proceeds as if no such motion had been made. In the House the previous question is generally seconded: in the Senate it is never seconded. When the character of the debate in modern legislative bodies is remembered it is easy to understand why the previous question is one of the most useful motions known to parliamentary law.

Voting.—In the casting of votes in the General Assembly of Iowa members are sometimes as listless as during debate. Both houses, however, require every member present to vote unless excused by the body, and no member is allowed to vote upon any matter in which he is personally interested. Upon routine matters votes are taken *viva voce*, although any two members may require the yeas and nays, and when the presiding officer is in doubt or a division is called for by any member a standing vote is always ordered by the chair. Those in the affirmative rise first and are counted, then those in the negative. The Constitution prescribes that the voting on bills shall be by yeas and nays. By this method every member is placed upon record, since the yeas and nays must be recorded in the journal. It is by consulting the yea and nay votes recorded in the journals that a member's legislative record may be discovered.²⁵⁴

So lax is the attention at times when the house is voting that a member often has to address the chair and have his vote recorded after the roll has been called. Frequently at the time the journal is corrected a member will have his vote recorded — the record generally showing that he was absent, although he may have been pres-

ent. To be sure such correction must be made with unanimous consent. The Senate, moreover, has a rule that no member can vote, except by consent of the Senate, in any case where he was not present when his name was called, unless he was absent on leave and even then he must vote before the result is announced.²⁵⁵

Reconsideration.—Ordinarily when a deliberative body expresses its will by a vote, that action is final; but in modern legislatures so great is the volume of business discharged that very often a step is taken before the body is really ready to proceed. As a result of this situation it is common to find a large use of the motion to reconsider.

Both branches of the General Assembly of Iowa have special rules regulating the use of the motion to reconsider, which is used in various ways. Indeed, any vote may be reconsidered, but there are two very common practices in Iowa. One is the reconsideration of the vote by which a bill passed or failed to pass the house, the other is to reconsider the vote by which a bill passed to its third reading. So rapid is legislative procedure that frequently a bill is given its third reading before a member discovers that it should be amended, or the effect of an adopted amendment is not understood until the bill has been given a third reading. At this stage it is impossible to propose the needed amendment or strike out the undesirable amendment. Unless something is done, the bill will be put upon its passage in that form. But by moving a reconsideration of the vote by which the bill passed to its third reading it is possible to get the bill back in the same stage as it was before, and the correction can then be made. If it is the desire of a member, after he gets a bill back into the stage of consideration, to strike out an

amendment which has been adopted he must next move a reconsideration of the vote by which the amendment was adopted.

The same situation exists when the bill has been placed upon its passage. That is to say, when the motion to reconsider the vote by which a bill passed or failed to pass the house has been adopted, it is necessary then to move another reconsideration in order to get the bill in a stage of procedure at which it can be considered. For instance, after a vote of passage is reconsidered and the bill is again before the house it is in the stage of procedure just preceding the stage of passage, that is, it is in the same position as bills which have been given their third reading. At this stage, as has already been noticed, the only action that can be taken in reference to the bill is to put it upon its passage; but the object of the reconsideration is to get it before the assembly at a stage where some action can be taken, so it is necessary to move that the vote by which the bill passed to its third reading also be reconsidered. If this carries, then new amendments can be added, or the bill recommitted, or indefinitely postponed, or any action that the body sees fit may be resorted to, just as if the bill had never gone beyond that stage of procedure.

According to the House rule, when any proposition has been carried or lost it is in order "for any member of the majority",²⁵⁶ that is, any one on the prevailing side, on the same day or the next following to move for a reconsideration. This motion takes precedence of all other business except the consideration of a conference report, a motion to fix the day to which the house shall adjourn, to adjourn, or to take a recess. After the motion is made it can not be withdrawn without consent except before the

expiration of the time in which it can be made. After it is once made any member may call it up for consideration at the proper time. When the motion to reconsider is made during the last six days of the session it must be disposed of at once and can not lie over. In order that a motion to reconsider a vote by which a bill passed or failed to pass the House may be adopted it must receive a constitutional majority, that is, more than half of the duly elected members. Thus in the House when a motion to reconsider a vote by which a bill passed, or failed to pass, or was indefinitely postponed, is put, the vote is always taken by yeas and nays. Bills which are indefinitely postponed are by a special rule of the House given the same status as bills which fail to pass. All other motions to reconsider require but a simple majority of those voting — such as motions to reconsider the vote by which the previous question was ordered or an amendment adopted or a bill passed to its third reading.²⁵⁷

In the Senate the rule in regard to the motion to reconsider is not so complicated. The rule reads: "When a motion or question has been decided, any member having voted on the prevailing side may move a reconsideration on the same or next legislative day."²⁵⁸ No votes are taken by yeas and nays, a simple majority being sufficient in every case. In practice both in the Senate and the House motions to reconsider are often filed instead of being offered from the floor. The purpose of filing a motion to reconsider is to record it within the time prescribed so that it can be called up at a later date, after the matter can be canvassed with certain members or when members who were absent may be present.

Filed motions to reconsider are of course in writing, and they are sometimes signed by more than one member:

for example, in the Senate of the Thirty-sixth General Assembly there was one motion filed to reconsider a vote which was signed by twenty-seven members.²⁶⁰ In the House motions to reconsider are frequently seconded. Often in these cases the motion is seconded by more than one member.²⁶⁰ In practice it appears that about as many motions to reconsider are filed as are made from the floor. If the action has just been taken and it is thought desirable to have an immediate reconsideration the motion is usually made from the floor, but if it is thought more expedient to have a reconsideration at a later date then the motion is usually filed. After it is filed it can be called up at any convenient time. One important point to be remembered, however, is that a motion to reconsider must always be made by some one who voted on the prevailing side, that is, by some one who has changed his opinion.

One further practice in connection with the motion to reconsider must be noticed. So common is the motion to reconsider that friends of a bill are not certain even after a bill has passed that the action is final. In order to avoid the possibilities of a motion to reconsider, it is the practice to make the motion and move to lay the motion to reconsider on the table. This practically disposes of the matter, especially in the Senate where a two-thirds vote is necessary to take a motion from the table.²⁶¹ In practice motions and matters are seldom taken from the table after being thus disposed of.

Order of Business.—As would be inferred from preceding sections of this paper, some regular and pre-designed order of business is necessary in every legislative assembly in order to dispose of the vast number of

It is not unusual for the house to be so absorbed in some other measure at the time set for a special order that it does not care to consider the special order at that moment and so action is deferred until some other time, which is specified in the motion deferring action. In this way a special order may be carried over for several times.

Calendar.—In connection with the order of business the calendar²⁶⁶ must also be considered. As has already been pointed out, the calendar is a list of bills and joint resolutions which are ready for the consideration of the house. Each bill is given a calendar number at the time it is placed on the calendar. Thus bills are numbered consecutively on the calendar and are often referred to by their calendar number as well as by their file number in the originating house. The calendar also contains a list of the special orders that have been made. Bills are usually placed upon the calendar after the adoption of some more or less favorable recommendation by a committee; but there are other ways in which bills may be placed upon the calendar.

Bills are sometimes placed upon the calendar by unanimous consent or motion after the committee has recommended indefinite postponement without any action being taken upon the report of the committee, or upon motion after the reconsideration of the vote to indefinitely postpone, or upon being recalled from the committee, or upon the recommendation of the committee itself. So, also, when a bill passes or fails to pass and a motion to reconsider is adopted, the bill may again be placed on the calendar. Occasionally when there is some reason for not considering it at the time set a bill is continued on the calendar in its place or placed at the foot of the calendar.

Journals.—The Constitution of the State requires each branch of the General Assembly to keep a journal of its proceedings;²⁶⁷ and it has been decided by the courts that a constitutional requirement that each house of a legislature keep a journal of its proceedings means that the journal should show all the proceedings in each house and all the steps taken in the passage of every bill.²⁶⁸ Moreover, where the Constitution expressly requires an entry of a record, like the yeas and nays on a bill, a failure to comply with this requirement would necessarily invalidate the act. But unless the Constitution specifically requires the journal to affirmatively show some action, the fact that the journal does not show the required step of procedure will not be proof that the step was not taken. Everything is in favor of the validity of an act.²⁶⁹

In Iowa the chief clerk in the House and the secretary in the Senate are charged with seeing that the journal of each day's proceedings is correctly and fully kept and made up and a copy given to the State printer in time for printing before the next day's session. These officers are also charged with the custody and safe-keeping of the corrected journal during the session. After the session the authenticated printed journal of each house is filed with the Secretary of State. In both branches of the legislature the journal is really kept and made up by a journal clerk under the supervision of the chief clerk, or secretary as the case may be.²⁷⁰

The journal of the preceding day is printed at night and placed upon the desks of the members the next morning. In the House the journal is corrected as the first order of business in the morning; in the Senate the journal is corrected at the pleasure of the Senate. In both houses after the journal is corrected it is returned to the

State printer and the corresponding corrections are made by him. The recording officers of each house also make the same corrections in the written journal, although a corrected printed journal is preserved as the official journal. The type and forms used by the State printer in printing the journals are prescribed by law. In both branches of the legislature the printed journal, as has been pointed out, is used as an agency for getting amendments printed in order that they may be viewed in that form in connection with the printed bill. In 1915 the General Assembly also provided for the general distribution of the daily journals at a subscription rate of one dollar for either the Senate or House journal for each session.²⁷¹

Suspension of the Rules.— No practice of parliamentary procedure is perhaps more important in law-making than the suspension of the rules.²⁷² Although the practice of suspending the rules has been referred to in an earlier section of this paper, it needs special attention at this point. Rules are suspended for the purpose of facilitating the passage of bills. Thus a bill in its passage goes through several different stages, some of which are often omitted by suspending the rules. For example, bills are seldom engrossed, but the rules are suspended and they are considered engrossed. Likewise, a bill may not be given a third reading; but the rules being suspended, a reading given for information is considered a third reading. Another rule frequently suspended is the rule which prohibits a second and third reading on the same day: in fact any rule can be suspended in either house by a two-thirds vote of the members present. This is not only true of the so-called standing rules but of all rules — the

rules adopted for a particular session as well as the rules of common parliamentary law.²⁷³

Unanimous Consent.—There is another method of accomplishing the same result as by suspending the rules and that is by obtaining unanimous consent.²⁷⁴ It is more difficult to obtain unanimous consent than to obtain a suspension of the rules because it requires the consent of every one present, while the motion to suspend requires only a two-thirds vote. Anything can be done if unanimous consent is granted, irrespective of special rules or common parliamentary law. This must necessarily be true when “the great purpose of all rules and forms, is to subserve the will of the assembly rather than to restrain it; to facilitate, and not to obstruct, the expression of their deliberative sense.”²⁷⁵

IV

SUMMARY OF THE STAGES OF PROCEDURE THROUGH WHICH A BILL MAY PASS IN THE GENERAL ASSEMBLY OF IOWA

IN the preceding pages of this paper an attempt has been made to trace the steps through which a bill may pass in order to become a law, and to discuss briefly some matters which though not a part of the regular stages in the passage of a bill are closely related to them. Since that discussion often led to the analysis of constitutional and statutory provisions as well as regulations of the legislature and rules of common parliamentary law, it seems proper for the sake of clearness and convenience to summarize the stages of procedure through which a bill may pass in the General Assembly of Iowa.

Introduction.—A bill may be introduced in either branch of the legislature by a member, by a committee, or from the opposite house by message. In either case it is presented from the floor of the house by the member introducing it or in charge of it, or by the officer delivering the message. After it is introduced it remains in the actual or constructive custody of the chief recording officer as long as the house has it under consideration. (pp. 203–207.)

First and Second Reading.—After a bill is introduced it is given its first reading. This is usually done in a very superficial manner by the reading clerk, and generally consists of a reading by title. If there is no objection to the bill at this point it is given its second reading, which

in practice amounts to the reading of the title over again. (pp. 214-217.)

Commitment.—Following its first and second reading a bill is usually referred to the appropriate standing committee by the presiding officer as a matter of course and without question, although the house may order it referred to a certain standing committee or to a special committee; or the house may order the bill considered in committee of the whole. In practice, however, select committees and committees of the whole are seldom used. A bill originating in a committee is not always committed, but is often allowed to pass to the next stage of procedure. (pp. 217-220.)

Delivery to the Committee.—When a bill has been referred to some committee it is delivered to the committee chairman by the recording officer of the house. The chairman gives the house officer a receipt for the bill, so that it remains in his constructive custody although not in his actual possession. (pp. 207, 208.)

Consideration in Committee.—After a bill has been delivered to a committee it is in the hands of that committee for consideration, and upon the completion of such consideration the committee embodies the result of its deliberations in a report. Under the order of business known as “reports of committees” the chairman of the committee presents the report from the floor of the house. (pp. 220-222.)

Consideration of the Committee Report.—Following the report of a committee the house is at liberty to act at once by either adopting or rejecting the report, or it may pass the report on file, that is, lay it over for the time being without consideration. In cases where the committee reports indefinite postponement, it is customary to act

upon the report at once and in most instances such a report is adopted without question. Ultimately every committee report is disposed of by being either directly or indirectly adopted or rejected. (pp. 222-226.)

Placed on the Calendar.—If the committee makes a favorable report of some kind and the report is adopted the recording officer of the house places the bill on the calendar, that is, on the list of bills which are ready for the consideration of the house. When a bill is placed on the calendar it is given a calendar number which determines the order of its consideration when the house is considering bills on the calendar. (pp. 226, 258.)

Consideration on the Floor.—When a bill is reached on the calendar it is taken up and considered by the house, unless some action is taken concerning the bill which defers consideration for the time being. If amendments have been reported by the committee to which it was referred, these amendments are first considered and disposed of. After the consideration of committee amendments, members of the house are at liberty to propose amendments from the floor of the house. At any time during this stage of procedure members may engage in debate upon the proposed amendments or upon the merits of the bill, subject of course to the regulations of the house and the rules of common parliamentary law. (pp. 226-228.)

Engrossment and Third Reading.—After a bill has been considered on the floor of the house and put in the form desired by the adoption of either committee amendments or those offered by members, it is ready to be engrossed, that is, to have the changes made during the consideration on the floor of the house actually incorporated into the bill. In practice this is done by the record-

ing officers in each branch of the legislature, technical engrossment having been virtually abandoned. Thus engrossment and third reading are now merged into one step. When this stage is reached it is now customary to make the motion that "the rules be suspended and the bill be considered engrossed and read a third time". If this motion should be decided in the negative it would be necessary to order the bill engrossed and wait for the committee on engrossed bills to report. After engrossment has been dispensed with or the bill has been properly engrossed it is ready for its third reading. Legislators have interpreted a third reading to be a reading in full, so the bill is given a reading in full, although many sections are frequently omitted in the "full" reading. (pp. 229-232.)

Passage.—When a bill has been put in proper form and read a third time the vote upon its final passage is immediately taken without debate. The presiding officer puts the question without waiting for a motion to be made from the floor of the house. By the Constitution of the State a majority of all the members elected to the house is necessary for the passage of a bill. The vote is taken by yeas and nays and is recorded in the journal of the house. If a bill passes, its title is then agreed to. At this time the title may be amended or changed in any manner necessary to make it comply with the constitutional requirement that the subject of every act shall be expressed in the title. (pp. 232-234.)

Authentication and Transmission to the Other House.
—After a bill has been declared to have passed the house, the recording officer signs it and endorses the date of passage upon it. The bill is then transmitted to the other branch of the legislature, together with a message

from the originating house informing the other branch of the passage of the bill and asking its concurrence in the action taken. (pp. 188, 207.)

Action in the Other House.— When a bill is received by message from the other house it is dealt with in the same manner as if the bill had originated in the receiving house. If it is successful in running the gauntlet of legislative procedure without change or alteration in the receiving house it will in time pass through all the stages to which it was subjected in the original house, namely: first and second reading, commitment, delivery to committee, consideration in committee, consideration of committee report, placing on calendar, consideration on the floor, engrossment and third reading, passage and authentication, and transmission by message to the originating house. If, however, a bill is rejected or defeated in the receiving house the originating house is merely notified of the action by message, and the bill is not returned to the originating house. (pp. 207, 234.)

Return to the Originating House Without Amendments.— When the receiving house returns a bill to the originating house without amendments the bill does not come before the house again, but remains in the custody of the recording officer until it is enrolled by the enrolling clerk and presented to the presiding officers for their signatures. (p. 234.)

Return to the Originating House with Amendments.— A bill returned by message to the originating house with amendments goes to the presiding officer's table, where it remains until it is taken up under the proper order of business. The proposed amendments may be first considered by a committee, or the house may act directly upon them. When the house does act it considers each amend-

ment separately, and it may concur, concur with an amendment, or refuse to concur. If the originating house concurs in all the amendments without any changes, the proceedings between the two houses on the bill are at an end and the bill passes to the next stage of procedure. But if the originating house refuses to concur in any one of the amendments, or concurs in one or more with an amendment, then the bill is returned by message to the house making the original amendment. (pp. 235, 236.)

Return to the Amending House without Amendments.

— When a bill is returned by message to the amending house without the concurrence of the originating house in all of the amendments previously adopted by the amending house, it goes to the presiding officer's table, where the bill remains until it is taken up under the proper order of business. The amending house may then either insist or recede from any or all of its amendments which have not been concurred in by the other house. If it recedes from all of the amendments to which the other house has not agreed, the proceedings between the two houses are at an end; but if it insists on one or more of these amendments a conference is necessary. (p. 236.)

Return to the Amending House with Amendments.—

Upon the return of a bill by message to the amending house with a conditional concurrence of the originating house, that is, with amendments to one or more of the amendments adopted by the amending house, the bill goes to the presiding officer's table, where it remains until it is taken up under the proper order of business. The amending house may then either concur, or refuse to concur in any one of the amendments made to the amendments already adopted by it. If it concurs in all of the amendments made to its own amendments the proceedings are

at an end; but if it refuses to concur in any of the amendments to its own amendments the bill must be returned to the originating house to give that body an opportunity to recede from its amendments to the amendments of the amending house. When a bill is so returned to the originating house and it refuses to recede from any of its amendments not agreed to by the amending house, a conference is necessary. It appears that in the last seven sessions of the General Assembly no bills have been returned to the amending house with an amendment. (pp. 236, 237.)

Settlement of Differences by Conference.—When an amending house insists upon its amendments, or in other words when the two branches of the legislature can not reach an agreement by the adoption and rejection of amendments, then the bill is returned by message to the house refusing to concur, announcing that the house insists upon its action and that a conference committee of four has been appointed. When this message is taken up for consideration by the house refusing to concur it also appoints a conference committee of four. If the joint conference committee reaches an agreement its report may be either adopted or rejected. When it is adopted the bill is passed in conformity thereto, and the proceedings between the houses are at an end. Upon the rejection of a conference committee report by one or both of the houses or upon the disagreement of the conference committee, a new conference may be held at the pleasure of the houses. A second conference, however, is rare. A disagreement of a conference committee or the rejection of the report of a conference committee usually means the defeat of the bill. (pp. 237–239.)

Enrollment.—After a bill has passed both branches

of the legislature it is ready to be enrolled, that is, copied on parchment. This is done by the enrolling clerk of the originating house. At this time all of the amendments which have been made to the bill in the proceedings between the two houses are incorporated, and the caption "A Bill" is left off, so that the title reads "An Act". When a bill has been duly enrolled it is signed by the recording officer of the originating house which is in itself an authentication of the true origin of the bill. (p. 241.)

Examination by the Committees on Enrolled Bills.—Following the enrollment of a bill it is examined by the joint committee on enrolled bills and also by the committee on enrolled bills of the originating house. The purpose of this examination is to see that the bill is properly enrolled before it is signed. The joint committee on enrolled bills reports the result of its examination to both branches of the legislature, while the committee on enrolled bills of the originating house reports only to that house of the legislature. The chairman of each branch of the committee signs a certificate on behalf of the joint committee to the effect that the bill was found correctly enrolled. This certificate is affixed to the bill. (pp. 241, 242.)

Signing by the Speaker and President of the Senate.—After examination by the committees on enrolled bills the bill is laid before the speaker and signed in the presence of the House, whether it be a House or Senate bill. It is then laid before the president of the Senate and signed in the presence of the Senate. The signatures of the presiding officers of the two houses of the legislature constitute the legal authentication of the legislative action as expressed in the bill. (p. 242.)

Transmission to the Governor.— After the bills are signed by the presiding officers, the chairmen of the committees on enrolled bills present the bills of their respective houses to the Governor. A report of the House and Senate bills presented to the Governor is made to the respective houses and entered upon their journals. (p. 242.)

Executive Confirmation or Veto.— When a bill is presented to the Governor any time before the last three days previous to adjournment the Constitution gives him a period of three days in which to approve or disapprove the bill. If the Governor approves a bill he does so by signing the enrolled bill and placing the date of his approval upon it. Then he notifies the originating house by message of his action. When he disapproves a bill he returns it to the house of its origin with a veto message stating his objections to it. If a bill is presented to the Governor during the last three days of the session the Governor has thirty days in which to file the bill along with his approval or objections with the Secretary of State. (pp. 242, 243.)

Action upon the Governor's Message.— Upon receipt of a message from the Governor stating that he has approved or disapproved of a bill the communication is entered upon the journal of the originating house. If the communication is a veto message it is ordered read and spread in full upon the record. The house may then consider the bill, refer it to a committee, or defer action to some future time. The vote on passing a bill to which the Governor has objected must be adopted by a two-thirds vote of all the members elected to the house. If the bill fails to pass the originating house, proceedings are at an end; but if it passes by the required majority it

is transmitted to the other house and there considered. (p. 242.)

Filing with the Secretary of State.— After a bill is approved by the Governor, or is retained by him longer than three days while the legislature is still in session, or is passed over the Governor's veto, it becomes a law and is filed with the Secretary of State for safe keeping. The enrolled bill constitutes the legal proof of what the legislative action was in a particular case. (pp. 244, 245.)

NOTES AND REFERENCES

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- ² Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, pp. 2-5.
- ³ Paul's *Parliamentary Law*, pp. 17, 18.
- ⁴ Quoted in Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. viii.
- ⁵ Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. viii.
- ⁶ *Senate Manual*, 3rd Session, 63rd Congress, p. 67.
- ⁷ Reed's *Parliamentary Rules*, p. 12.
- ⁸ *Senate Manual*, 3rd Session, 63rd Congress, pp. 67, 68.
- ⁹ *Senate Manual*, 3rd Session, 63rd Congress, p. 68.
- ¹⁰ *House Manual and Digest*, 3rd Session, 63rd Congress, p. 93, footnote.
- ¹¹ *House Manual and Digest*, 3rd Session, 63rd Congress, pp. 20, 434.
- ¹² Cushing's *Manual of Parliamentary Practice* (fourth edition), 1845, p. 4.
- ¹³ *Council Rules*, 1839-1840, No. 41, in *Council Journal*, 1839-1840, p. 208; *House Rules*, 1846-1847, No. 61, in *House Journal*, 1846-1847, p. 478.
- ¹⁴ *Laws of Iowa*, 1846-1847, p. 94.
- ¹⁵ *House Rules*, 1852, No. 61.
- ¹⁶ *Manual of Procedure in the Public Business of the House of Commons* (third edition), 1912, prefatory note; Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. x.
- ¹⁷ *Senate Journal*, 1862, p. 58.
- ¹⁸ *House Rules*, 1888, No. 55.
- ¹⁹ *Code of 1873*, Sec. 27; *Code Commission Report*, 1873, p. 4.
- ²⁰ Cushing's *Manual of Parliamentary Practice* (fourth edition), 1845, p. 3.

- ²¹ Perry's *Parliamentary Law* in the *Modern American Law Series*, 1914, p. 445, note.
- ²² *House Rules*, 1913, No. 59.
- ²³ Stimson's *Popular Law-Making*, pp. 1-14.
- ²⁴ Ilbert's *Methods of Legislation*, pp. 34-36.
- ²⁵ Ilbert's *Methods of Legislation*, pp. 36-41.
- ²⁶ *House Journal*, 1897 (extra session), p. 175.
- ²⁷ Ilbert's *Methods of Legislation*, p. 45.
- ²⁸ *Constitution of Iowa*, 1857, Art. III, Secs. 3, 4.
- ²⁹ *Constitution of Iowa*, 1857, Arts. III, IV, V.
- ³⁰ Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 305.
- ³¹ Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 306.
- ³² *Senate Journal*, 1915, p. 1041.
- ³³ *Senate Rules*, 1915, No. 38.
- ³⁴ Hinds's *Precedents of the House of Representatives of the United States Congress*.
- ³⁵ *Senate Journal*, 1915, p. 1041.
- ³⁶ See Mr. Horack's paper on *The Committee System* in this volume, pp. 545-555.
- ³⁷ *House Journal*, 1915, p. 235; *Senate Journal*, 1915, p. 364.
- ³⁸ *Senate Journal*, 1907, p. 236; *House Journal*, 1915, pp. 226, 227.
- ³⁹ *Constitution of Iowa*, 1857, Art. III, Sec. 9; *Senate Journal*, 1915, p. 815.
- ⁴⁰ *House Journal*, 1915, pp. 11, 120; *Senate Journal*, 1915, pp. 7, 110.
- ⁴¹ *House Journal*, 1915, pp. 220-222, 249, 250; *Senate Journal*, 1915, pp. 647, 814-816.
- ⁴² Compare *House Rules*, 1838-1839, in *House Journal*, 1838-1839, pp. 293-297, with *House Rules*, 1915; also, *Council Rules*, 1838-1839, in *Council Journal*, 1838-1839, pp. 15-20, with *Senate Rules*, 1915.
- ⁴³ Compare *Joint Rules*, 1838-1839, in *House Journal*, 1838-1839, pp. 297, 298, or *Council Journal*, 1838-1839, pp. 26, 27, with *Joint Rules*, 1915.
- ⁴⁴ *House Journal*, 1915, p. 11; *Senate Journal*, 1915, p. 7.

⁴⁵ *House Journal*, 1911, pp. 441, 442; *Senate Journal*, 1911, pp. 394, 395; *House Journal*, 1913, pp. 820, 821; *Senate Journal*, 1913, pp. 505-508, 615.

⁴⁶ *House Journal*, 1915, p. 222; *Senate Journal*, 1915, p. 647; *House Journal*, 1911, pp. 441, 442; *Senate Journal*, 1911, pp. 394, 395.

⁴⁷ *House Rules*, 1915, No. 59; *Senate Rules*, 1915, No. 40.

⁴⁸ *Senate Journal*, 1915, p. 1041.

⁴⁹ *Constitution of Iowa*, 1857, Art. III, Sec. 17; *Code Supplement of 1913*, Secs. 41-a, 41-b.

⁵⁰ *Manigault v. S. M. Ward & Co. et al*, 123 Federal Reporter 706, at 716, 717.

⁵¹ *Cooley's Constitutional Limitations* (seventh edition), pp. 186, 187.

⁵² *House Journal*, 1915, pp. 187, 229, 267, 942, 1640; *Senate Journal*, 1915, pp. 137, 156, 217, 976, 1518.

⁵³ *House Journal*, 1915, pp. 350, 985, 1523, 2087; *Senate Journal*, 1915, pp. 339, 603, 1502, 1978.

⁵⁴ *House Rules*, 1915, No. 54; *Senate Rules*, 1915, No. 38; *Council Rules*, 1838-1839, No. 39, in the *Council Journal*, 1838-1839, p. 19.

⁵⁵ See above pp. 172, 173.

⁵⁶ *House Journal*, 1915, pp. 318, 324, 365, 828, 1884, 2019.

⁵⁷ *House Rules*, 1915, No. 19.

⁵⁸ Compare the journals of the two periods and also the rules of procedure.

⁵⁹ *House Journal*, 1897 (extra session), p. 175.

⁶⁰ *House Journal*, 1915, pp. 766, 1195; *Senate Journal*, 1915, pp. 990, 1901.

⁶¹ *House Journal*, 1838-1839, pp. 69, 76; *Council Journal*, 1838-1839, pp. 35, 72.

⁶² *House Journal*, 1878, pp. 44-47.

⁶³ *Senate Journal*, 1915, p. 156; *House Journal*, 1915, p. 172.

⁶⁴ *Senate Journal*, 1915, p. 156; *House Journal*, 1915, p. 172.

⁶⁵ *Senate Journal*, 1915, pp. 125-127; *House Journal*, 1915, pp. 159, 160.

⁶⁶ *Senate Reports*, 2nd Session, 54th Congress, 1896-1897, No. 1335.

⁶⁷ *Senate Reports*, 2nd Session, 54th Congress, 1896-1897, No. 1335.

⁶⁸ *House Journal*, 1860, pp. 287, 288.

⁶⁹ Compiled from the *House Journals* and *Senate Journals* of 1907, 1909, 1911, 1913, and 1915.

⁷⁰ *House Journal*, 1915, pp. 2023, 2110, 2122; *Senate Journal*, 1915, pp. 1946, 1949.

⁷¹ *House Journal*, 1913, p. 829; *Senate Journal*, 1913, p. 257.

⁷² *House Journal*, 1915, pp. 226, 235, 870, 1059; *Senate Journal*, 1915, pp. 795, 1389; *House Journal*, 1913, pp. 1638, 1639, 1686; *Senate Journal*, 1907, pp. 236, 871, 1193.

⁷³ *House Journal*, 1915, pp. 595, 596, 612, 758, 870; *House Journal*, 1911, p. 1440; *House Journal*, 1909, p. 1038; *Senate Journal*, 1907, p. 155; *House Journal*, 1907, p. 184.

⁷⁴ *Senate Journal*, 1909, pp. 47, 120; *House Journal*, 1909, pp. 129, 130.

⁷⁵ *House Journal*, 1907, p. 52; *House Journal*, 1909, p. 50; *Senate Journal*, 1911, pp. 8, 575; *Senate Journal*, 1913, p. 18; *House Journal*, 1913, p. 1422; *House Journal*, 1915, pp. 806, 807, 858.

⁷⁶ *Code Supplement of 1913*, Secs. 119, 138, 139.

⁷⁷ *Code of 1897*, Secs. 13, 15, 16, 152.

⁷⁸ *Senate Journal*, 1913, pp. 12, 210, 248, 469, 505-508, 871; *House Journal*, 1915, pp. 266, 1116, 1117.

⁷⁹ *House Journal*, 1915, pp. 17, 22.

⁸⁰ *House Journal*, 1915, pp. 107, 137; *Senate Journal*, 1915, pp. 7, 728, 729.

⁸¹ Compiled from the *House Journals* and *Senate Journals* of 1907, 1909, 1911, 1913, and 1915.

⁸² *House Bills*, 1915, J. R. Nos. 5, 6, 7, 8, 9, 10; *Senate Bills*, 1915, J. R. Nos. 6, 9, 12, 14, 18.

⁸³ *Laws of Iowa*, 1858, pp. 432, 434.

⁸⁴ *Laws of Iowa*, 1858, p. 434.

⁸⁵ *Joint Rules*, 1915, Nos. 2, 3.

⁸⁶ *House Journal*, 1915, pp. 616-618; *Senate Journal*, 1915, pp. 289, 290.

⁸⁷ *House Rules*, 1915, No. 10, Sec. 7; *Senate Rules*, 1915, No. 1, Sec. 4.

⁸⁸ *House Rules*, 1915, No. 10; *Senate Rules*, 1915, No. 1.

⁸⁹ *Joint Rules*, 1915, Nos. 9, 11.

- ⁹⁰ *House Bills*, 1915, J. R. No. 12; *Senate Bills*, 1915, J. R. Nos. 3, 8.
- ⁹¹ *Laws of Iowa*, 1913, p. 427.
- ⁹² *Code of 1897*, Sec. 181.
- ⁹³ *Historical and Classified Index to Legislative Bills*, Iowa, 1915, p. 3.
- ⁹⁴ *Appropriation Acts and Joint Resolutions of the Thirty-sixth General Assembly*, pp. 34-48.
- ⁹⁵ *Constitution of the United States*, Art. I, Sec. 7, Par. 3.
- ⁹⁶ *Constitution of Iowa*, 1857, Art. III, Sec. 1.
- ⁹⁷ Jones's *Statute Law Making in the United States*, pp. 193-197; Willard's *Legislative Hand Book*, pp. 127-147.
- ⁹⁸ Sustaining the proposition:
 - May v. Rice, 91 Indiana 546 (1883).
 - Boyers v. Crane, 1 West Virginia 176 (1865).
 - In re Advisory Opinion. 31 Southern Reporter 348 (Florida, 1901).
 Denying the proposition:
 - State v. Delesdenier, 7 Texas 76 (1851).
 - Smith v. Jennings, 67 South Carolina 324 (1903).
 - Swann v. Buck, 40 Mississippi 268 (1866).
- ⁹⁹ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 192.
- ¹⁰⁰ *Laws of Iowa*, 1838-1839, pp. 515-519.
- ¹⁰¹ *Laws of Iowa*, 1848 (extra session), pp. 89, 90.
- ¹⁰² *House Journal*, 1860, pp. 287, 288.
- ¹⁰³ *House Journal*, 1915, p. 18; *Senate Journal*, 1915, pp. 7, 388, 729, 1798.
- ¹⁰⁴ *House Journal*, 1915, pp. 266, 280.
- ¹⁰⁵ *Senate Journal*, 1915, p. 1806.
- ¹⁰⁶ *Laws of Iowa*, 1884, p. 232.
- ¹⁰⁷ *Code of 1897*, Secs. 37, 1380.
- ¹⁰⁸ *Code of 1897*, Secs. 182, 1380.
- ¹⁰⁹ *Constitution of Iowa*, 1857, Art. III, Sec. 24.
- ¹¹⁰ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 187-189.
- ¹¹¹ Compiled from the published laws of 1907, 1909, 1911, 1913, and 1915.

- ¹¹² *Laws of Iowa*, 1902, Ch. 130.
- ¹¹³ *Laws of Iowa*, 1913, Ch. 348.
- ¹¹⁴ *Laws of Iowa*, 1913, Chs. 351, 352, 353, 354, 355; *House Bills*, 1915, Files No. 66, 132, 173.
- ¹¹⁵ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 798.
- ¹¹⁶ *Senate Rules*, 1915, No. 16; *House Rules*, 1915, No. 43.
- ¹¹⁷ *Senate Rules*, 1915, No. 16.
- ¹¹⁸ *House Rules*, 1915, No. 43.
- ¹¹⁹ *Senate Rules*, 1915, No. 17; *House Rules*, 1915, No. 21. See above p. 207.
- ¹²⁰ *Code Supplement of 1913*, Sec. 41-a.
- ¹²¹ *Code Supplement of 1913*, Sec. 41-a.
- ¹²² *Code Supplement of 1913*, Sec. 41-a.
- ¹²³ See above pp. 177, 178.
- ¹²⁴ *Constitution of Iowa*, 1857, Art. III, Sec. 29.
- ¹²⁵ *Constitution of New Jersey*, Art. IV, Sec. VII, Par. 4.
- ¹²⁶ See Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 307-318.
- ¹²⁷ See above p. 166.
- ¹²⁸ *Senate Rules*, 1915, No. 16; *Constitution of Iowa*, 1857, Art. III, Sec. 29.
- ¹²⁹ *House Bills*, 1915, Files No. 66, 89, 127, 422, 427; *Senate Bills*, 1915, Files No. 38, 83, 158, 210, 447.
- ¹³⁰ *Jones's Statute Law Making in the United States*, p. 81.
- ¹³¹ *Laws of Iowa*, 1838-1839, p. 516; *Constitution of Iowa*, 1846, Art. III, Sec. 1; *Constitution of Iowa*, 1857, Art. III, Sec. 1.
- ¹³² *Constitution of Iowa*, 1857, Art. III, Sec. 1.
- ¹³³ *House Journal*, 1915, pp. 567-569; *Senate Journal*, 1913, p. 1987.
- ¹³⁴ See above pp. 190-194.
- ¹³⁵ *Jones's Statute Law Making in the United States*, p. 82.
- ¹³⁶ See the writer's paper on the *Interpretation and Construction of Statute Law in Iowa* in this volume, pp. 462-464; and Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 366-373.

¹³⁷ *Campbell v. Jackman Bros.*, 140 Iowa 475, at 479-481. Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 821.

¹³⁸ Jones's *Statute Law Making in the United States*, pp. 210-213. See also Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 345-348.

¹³⁹ See publication clause at end of any act. *Laws of Iowa*, 1913, Ch. 153, p. 178.

¹⁴⁰ *Constitution of Iowa*, 1857, Art. III, Sec. 26; *Code of 1897*, Sec. 36.

¹⁴¹ *Constitution of Iowa*, 1857, Art. III, Sec. 15.

¹⁴² *Historical and Classified Index to Legislative Bills*, Iowa, 1915, p. 3.

¹⁴³ *Senate Rules*, 1915, No. 20 (d).

¹⁴⁴ *Senate Rules*, 1915, No. 20 (d).

¹⁴⁵ *House Rules*, 1915, No. 44.

¹⁴⁶ See Journals of either house under the heading "Introduction of Bills".

¹⁴⁷ *House Manual and Digest*, 3rd Session, 62nd Congress, p. 435.

¹⁴⁸ See Mr. Briggs's paper on the *History and Organization of the Legislature in Iowa* in this volume.

¹⁴⁹ *Senate Rules*, 1915, No. 16.

¹⁵⁰ *House Journal*, 1915, pp. 416, 417.

¹⁵¹ Hackett's *The Gavel and the Mace*, p. 43.

¹⁵² *House Journal*, 1915, p. 1791.

¹⁵³ *Senate Journal*, 1915, pp. 160, 385, 460.

¹⁵⁴ *Senate Journal*, 1915, pp. 125, 447; *House Journal*, 1915, pp. 459, 1114.

¹⁵⁵ *House Journal*, 1915, p. 1300; *Senate Journal*, 1915, p. 1668.

¹⁵⁶ *House Journal*, 1915, p. 447; *Senate Journal*, 1915, p. 125.

¹⁵⁷ *House Rules*, 1915, No. 65.

¹⁵⁸ *Senate Rules*, 1915, No. 42; *House Rules*, 1915, No. 65. See above p. 197.

¹⁵⁹ *Senate Rules*, 1915, No. 42; *House Rules*, 1915, No. 65.

¹⁶⁰ *Senate Rules*, 1915, No. 25; *House Rules*, 1915, No. 56; *Joint Rules*, 1915, Nos. 12, 13; *House Journal*, 1915, p. 708; *Senate Journal*, 1915, p. 211.

¹⁶¹ *Senate Journal*, 1915, p. 925.

- ¹⁶² *House Rules*, 1915, No. 46; *Senate Rules*, 1915, No. 18.
- ¹⁶³ *Council Journal*, 1839-1840, p. 34.
- ¹⁶⁴ *House Journal*, 1915, p. 1530; *Senate Journal*, 1915, p. 1601; *Council Journal*, 1838-1839, p. 169.
- ¹⁶⁵ *Council Journal*, 1841-1842, p. 219; *Council Journal*, 1842-1843, p. 59; *Council Journal*, 1843-1844, p. 105; *Council Journal*, 1845, p. 50; *Senate Journal*, 1915, pp. 990, 1121.
- ¹⁶⁶ Compiled from the *Historical and Classified Index to Legislative Bills*, Iowa, 1915.
- ¹⁶⁷ *Council Journal*, 1839-1840, p. 60; *House Journal*, 1915, pp. 1635-1637, 1802, 1850, 1858.
- ¹⁶⁸ *House Journal*, 1915, pp. 436, 681, 1027; *Senate Journal*, 1915, pp. 156, 968, 1430; *Historical and Classified Index to Legislative Bills*, Iowa, 1915, pp. 16, 17, 278, 279.
- ¹⁶⁹ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 897.
- ¹⁷⁰ *Joint Rules*, 1915, No. 10; *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, pp. 897, 898.
- ¹⁷¹ *House Journal*, 1897 (extra session), pp. 174-177.
- ¹⁷² *House Journal*, 1897 (extra session), pp. 174-177.
- ¹⁷³ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, pp. 837-841.
- ¹⁷⁴ *House Rules*, 1915, Nos. 45, 46, 49; *Senate Rules*, 1915, Nos. 18, 19.
- ¹⁷⁵ Compiled from the *House Journal*, 1915, and *Senate Journal*, 1915.
- ¹⁷⁶ Compiled from the *Historical and Classified Index to Legislative Bills*, Iowa, 1915.
- ¹⁷⁷ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, pp. 845-854.
- ¹⁷⁸ *House Rules*, 1915, No. 47.
- ¹⁷⁹ *House Rules*, 1915, Nos. 48, 69-71.
- ¹⁸⁰ *Senate Rules*, 1915, No. 19.
- ¹⁸¹ *Senate Rules*, 1915, No. 19.
- ¹⁸² *Council Rules*, 1838-1839, No. 16, in the *Council Journal*, 1838-1839, p. 17; *House Rules*, 1838-1839, No. 18, in the *House Journal*, 1838-1839, p. 294.

- 183 See Mr. Horack's paper on *The Committee System* in this volume.
- 184 *House Journal*, 1915, p. 1221.
- 185 *Senate Journal*, 1915, p. 216.
- 186 *Senate Rules*, 1915, No. 20(a).
- 187 *Senate Journal*, 1915, p. 643.
- 188 *House Rules*, 1913, No. 61.
- 189 *House Rules*, 1915, No. 61.
- 190 *House Rules*, 1915, No. 61.
- 191 *House Rules*, 1915, No. 57; *Senate Rules*, 1915, No. 37; *House Journal*, 1915, pp. 143, 144. These rules are not strictly enforced.
- 192 *Senate Rules*, 1915, No. 31-a.
- 193 *House Rules*, 1915, Nos. 58, 61; *House Rules*, 1886, No. 56; *House Rules*, 1888, No. 54; *House Rules*, 1890, No. 54; *Senate Journal*, 1886, p. 95; *Senate Journal*, 1915, pp. 814, 815.
- 194 *House Rules*, 1915, No. 44; *Senate Rules*, 1915, No. 20.
- 195 *House Rules*, 1915, No. 61; *Senate Rules*, 1915, No. 31-a; data compiled from the *Historical and Classified Index to Legislative Bills*, Iowa, 1915.
- 196 *House Journal*, 1915, pp. 417, 455-457, 567, 593, 611, 612, 703, 704, 1123, 1164, 1185; *Senate Journal*, 1915, p. 1357.
- 197 *Senate Rules*, 1915, No. 31; *Senate Journal*, 1915, pp. 230-232; *House Journal*, 1915, p. 1171.
- 198 *House Journal*, 1915, p. 340.
- 199 *House Rules*, 1915, No. 61.
- 200 *House Rules*, 1915, No. 50; *Senate Journal*, 1915, pp. 157, 174.
- 201 *Senate Journal*, 1915, p. 398.
- 202 Cushing's *Law and Practice of Legislative Assemblies* (ninth edition), 1907, Sec. 2227; *House Manual and Digest*, 3rd Session, 63rd Congress, p. 454.
- 203 *House Journal*, 1907, pp. 690, 925; *House Journal*, 1906, p. 1153; *House Journal*, 1904, p. 693; *House Journal*, 1902, p. 550; *Senate Journal*, 1904, p. 418.
- 204 *House Journal*, 1915, p. 465; *Senate Journal*, 1915, p. 1375.

- ²⁰⁵ *House Journal*, 1906, p. 1153; *House Journal*, 1907, p. 690.
- ²⁰⁶ *People, ex rel. Hart v. McElroy*, 72 Michigan 446.
- ²⁰⁷ *Constitution of Iowa*, 1857, Art. III, Sec. 17.
- ²⁰⁸ *House Journal*, 1897 (extra session), pp. 171, 172.
- ²⁰⁹ *House Rules*, 1915, No. 51.
- ²¹⁰ *House Rules*, 1915, No. 52.
- ²¹¹ *Senate Rules*, 1915, No. 21.
- ²¹² *Senate Rules*, 1915, No. 22.
- ²¹³ *House Rules*, 1915, Nos. 30, 50.
- ²¹⁴ *Senate Rules*, 1915, No. 21.
- ²¹⁵ *Constitution of Iowa*, 1857, Art. III, Sec. 17.
- ²¹⁶ *Constitution of Iowa*, 1857, Art. III, Sec. 17.
- ²¹⁷ *Constitution of Iowa*, 1857, Art. III, Sec. 8.
- ²¹⁸ *Constitution of Iowa*, 1857, Art. III, Sec. 17.
- ²¹⁹ *Constitution of Iowa*, 1857, Art. III, Sec. 29.
- ²²⁰ *House Journal*, 1915, p. 466; *Senate Journal*, 1915, p. 442.
- ²²¹ *Joint Rules*, 1915, No. 9; *Senate Rules*, 1915, No. 42; *House Rules*, 1915, Nos. 53, 65.
- ²²² *Joint Rules*, 1915, No. 1.
- ²²³ *Joint Rules*, 1915, No. 1.
- ²²⁴ *Joint Rules*, 1915, No. 1.
- ²²⁵ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, pp. 872-874.
- ²²⁶ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 879; *Joint Rules*, 1915, No. 1.
- ²²⁷ *Joint Rules*, 1915, No. 1.
- ²²⁸ *House Journal*, 1907, p. 1509.
- ²²⁹ *House Journal*, 1915, pp. 1628, 1782, 1812, 1938, 2124; *Senate Journal*, 1915, pp. 1455, 1611, 1727, 1820, 1968.
- ²³⁰ *Joint Rules*, 1915, No. 1.
- ²³¹ *Cushing's Law and Practice of Legislative Assemblies* (ninth edition), 1907, p. 871.

²³² *House Journal*, 1915, pp. 1689, 2050; *Senate Journal*, 1915, p. 1601.

²³³ *Joint Rules*, 1915, No. 4.

²³⁴ *Joint Rules*, 1915, Nos. 4, 5; *Duncombe v. Prindle*, 12 Iowa 1; *Conly v. Dilley*, 153 Iowa 677. See the writer's paper on the *Interpretation and Construction of Statutes in Iowa* in this volume, pp. 450-455.

²³⁵ *Joint Rules*, 1915, Nos. 5, 6; *House Rules*, 1915, No. 55; *Senate Journal*, 1915, p. 841; *House Journal*, 1915, pp. 267, 1169, 2036; *Senate Journal*, 1915, pp. 150, 1018, 1991; *House Journal*, 1915, pp. 1613, 1922; *Senate Journal*, 1915, pp. 619, 1432; *Constitution of Iowa*, 1857, Art. III, Sec. 15.

²³⁶ *Joint Rules*, 1915, No. 7; *House Journal*, 1915, pp. 280, 981, 1215, 2130; *Senate Journal*, 1915, pp. 155, 858, 1602, 1991; *Constitution of Iowa*, 1857, Art. III, Sec. 16.

²³⁷ *Constitution of Iowa*, 1857, Art. III, Sec. 16; *House Journal*, 1915, pp. 522, 960, 1274, 2134; *Senate Journal*, 1915, pp. 163, 603, 1520, 1994.

²³⁸ *Code of 1897*, Sec. 32.

²³⁹ *Code of 1897*, Sec. 33.

²⁴⁰ *Senate Journal*, 1915, p. 365.

²⁴¹ *Duncombe v. Prindle*, 12 Iowa 1; *Code of 1897*, Sec. 34.

²⁴² *Constitution of Iowa*, 1857, Art. III, Sec. 26; *Code of 1897*, Secs. 35-37.

²⁴³ *Code of 1897*, Sec. 36.

²⁴⁴ *Code Supplement of 1913*, Sec. 36-a; *Franklin Township v. Greene County*, 110 Iowa 702; *Arnold v. Board of Supervisors*, 151 Iowa 155.

²⁴⁵ *House Rules*, 1915, No. 20.

²⁴⁶ *Gaines's The New Cushing's Manual of Parliamentary Law and Practice*, p. 33.

²⁴⁷ *Senate Rules*, 1915, No. 9.

²⁴⁸ See above pp. 182-187, 190-194.

²⁴⁹ *House Rules*, 1915, No. 34; *Senate Rules*, 1915, No. 39.

²⁵⁰ *House Rules*, 1915, Nos. 11, 14, 23.

²⁵¹ *Senate Rules*, 1915, Nos. 6, 10, 12; *Senate Journal*, 1915, pp. 1214, 1245, 1291.

²⁵² *House Rules*, 1915, No. 26.

²⁵³ *Senate Rules*, 1915, No. 12.

²⁸⁴ *House Rules*, 1915, Nos. 16, 18; *Senate Rules*, 1915, No. 8; *Constitution of Iowa*, 1857, Art. III, Secs. 10, 17.

²⁸⁵ *Senate Rules*, 1915, No. 8.

²⁸⁶ *House Rules*, 1915, No. 32.

²⁸⁷ *House Rules*, 1915, No. 28.

²⁸⁸ *Senate Rules*, 1915, No. 14.

²⁸⁹ *Senate Journal*, 1915, p. 901.

²⁹⁰ *House Journal*, 1915, p. 2102.

²⁹¹ *Senate Rules*, 1915, No. 38.

²⁹² *House Rules*, 1915, No. 10; *Senate Rules*, 1915, No. 1.

²⁹³ *House Manual and Digest*, 3rd Session, 63rd Congress, p. 453.

²⁹⁴ *Senate Rules*, 1915, No. 1.

²⁹⁵ *House Journal*, 1915, p. 364; *Senate Journal*, 1915, p. 295.

²⁹⁶ See above pp. 174, 175.

²⁹⁷ *Constitution of Iowa*, 1857, Art. III, Sec. 9.

²⁹⁸ *Montgomery Beer Bottling Works v. Gaston*, 126 Alabama 425, at 446.

²⁹⁹ For a collection of cases on the subject see *Century Digest*, Vol. 44, pp. 2312, 2313.

³⁰⁰ *House Rules*, 1915, No. 65; *Senate Rules*, 1915, No. 42.

³⁰¹ *Code of 1897*, Secs. 127-130; *Supplemental Supplement to the Code of Iowa*, 1915, Secs. 132-a-132-c.

³⁰² See above pp. 178, 179.

³⁰³ *House Rules*, 1915, No. 54; *Senate Rules*, 1915, No. 38.

³⁰⁴ See above pp. 178, 179.

³⁰⁵ *Cushing's Manual of Parliamentary Practice* (fourth edition), 1845, p. 160.

**FORM AND LANGUAGE OF STATUTES
IN IOWA**

**BY
JACOB VAN DER ZEE**

I

GENERAL INTRODUCTION

THE formulation of statutes by representatives of the people has been a cherished privilege in all English-speaking countries and especially in the United States. Laws are being turned out by American legislatures in gradually increasing quantities in the endeavor, it would seem, to meet the demands of a society which is every day becoming more and more complex. That the substance of these countless statutes aims to promote justice and the general welfare may be granted; but is their language so clear as to prevent differences of opinion and costly litigation or so readable as to be comprehended by lay folk, for whom most laws are primarily intended? Naturally, from the standpoint of the average citizen, whether the so-called lawgiver is worthy of his hire depends upon the product of his labors.

Generally speaking, the statute books of Iowa have been employed by two classes of persons: first, those who seek to learn the history of progress in the State; and secondly, those who desire a knowledge of legal rules in order to apply them to private and official life. To the masses the statute laws have made very little appeal or else have existed unheralded, perhaps entirely unknown. On account of the nature of the contents of these formidable-looking volumes of legislation, even those who are forced to resort to their pages experience no little difficulty in finding what they want. The plight of a person

who consults the Iowa statutes is that of the English statesman who thus described his feelings:

Not being myself a lawyer, and possessing, of course, no technical knowledge, I do confess, sir, that there is no task which I contemplate with so much distaste, as the reading through an ordinary act of parliament.¹

If the legislative output of popular assemblies in Iowa affords little or no attraction to the average reader, there are weighty reasons why its form and substance are well worth time and study, especially in these days when the happiness of mankind is deemed to rest so largely upon the enactments of the legislature. No doubt the *matter* about which legislators have declared their will attracts the attention of many who would find no interest whatever in the *manner* in which these rules of human conduct are expressed. And yet, that the welfare of society depends upon the form of statutes no less than upon the substance can be testified to by men who have discovered to their grief that a poorly worded law inevitably breeds expensive trouble in the courts. An examination, therefore, of the Iowa lawmakers' technique as illustrated by extracts from the statutes themselves may be of the highest practical value to the legislator of the present and the future, and it is with this thought in mind that the writer proposes to discuss the form of statute law in Iowa.

Law-making — indeed, all law — in England early became so much a mystery to laymen that Lord Bacon proposed a digest. "What I shall propound", he said, "is not to the matter of the laws, but to the manner of their registry, expression, and tradition; so that it giveth them rather new light than any new nature."² And Sir William Blackstone, a century later, added his testimony to that of others when he wrote as follows:

For, to say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays (which have sometimes disgraced the English, as well as other courts of justice) owe their original not to the common law itself, but to innovations that have been made in it by acts of parliament; "overladen (as Sir Edward Coke expresses it) with provisos and additions, and many times on a sudden penned or corrected by men of none or very little judgment in law."³

The early American legislatures had only English models when they needed to enunciate their policies by means of written language. Accordingly, legislative practices of English origin were imitated in the difficult task of making laws, and what the first thirteen States copied from the mother country became in turn a pattern for the statement of law in the later American Commonwealths. Now, what sort of legislative models did England have to offer? Jeremy Bentham, greatest of Anglo-Saxon law reformers, in his essay on *Nomography, or The Art of Inditing Laws*,⁴ bore witness to the defective character of English statutes early in the nineteenth century, when he declared that many of the difficulties of statutes were "due to confusion of thought, to obscurity of expression, to want of orderly arrangement."⁵ Although Bentham began to urge reform in the language of the law at least as early as 1793, his criticisms were quite as applicable to statutes, English or American, fifty or sixty years later, and so the form of statutes underwent few improvements: the style and language of laws remained fettered by the technical forms and prejudices of a by-gone age. In such ground, then, American statute law took root. Indeed, most States to-day are satisfied with the statute models of generations ago. It is proof of the proverbial conservatism of lawyers and legislators, and

helps to explain why the layman instinctively smells dust in the presence of anything savoring of law.

It is proper to state that the discussion which follows owes its inspiration primarily to the criticisms of Bentham who pioneered the way and to the writings of others who succeeded to his labors. Surprising as it may seem, but few men have followed the trail which Bentham blazed a century ago, and the reason for this fact was recently pointed out, namely: "the large commercial demand for legal works available for the business of litigation has absorbed the attention of jurists to the utter neglect of scholarly or literary service to the no less important business of legislation."⁶ All who are interested in the form of statutes are under lasting obligations to three Englishmen: George Coode who wrote an excellent brochure entitled, *On Legislative Expression: or, The Language of the Written Law* (1845); Lord Henry Thring, the author of *Practical Legislation* (1877 and 1902); and Sir Courtenay Ilbert who has covered much the same ground in *Legislative Methods and Forms* (1901), and *The Mechanics of Law Making* (1914). The chief American contributors to the literature of the subject with special reference to American legislation are A. R. Willard whose work, *A Legislative Handbook*, appeared in 1890, and Chester L. Jones whose volume, *Statute Law Making in the United States*, was published in 1913. The present writer wishes to add that in the following chapters he has looked at the statutes of Iowa in the light of the useful and practical suggestions of his predecessors in the field and to them must be given a large share of the credit for any merit which his criticisms may possess.

II

THE SESSION LAWS OF IOWA

It was nearly eighty years ago that the pioneers of the Territory of Iowa received an introduction to the legislative labors of their first chosen representatives. The law-making which then began and found expression in *The Old Blue Book* has continued at regular annual or, since 1846, biennial sessions with now and then an additional special sitting. Accordingly, the people's spokesmen have left behind not a little evidence of their activity in legislative halls: the finished product of their services to the Commonwealth of Iowa is embodied in fifty-five books of statutes. It is the form and language of the legislation in these volumes which constitute the text of the following paper.

PUBLICATION OF STATUTES

Acting in the light of the well-known principle that every one is presumed to know the law the Iowa legislature has always made some provision for the publication and distribution of its acts and resolutions shortly after the close of each session. The work of publication at first fell to the Secretary of the Territory and later to his successor, the Secretary of State; and more recently still, in 1915, it was put in the hands of the Supreme Court Reporter who is known as the "Code Editor". With the original rolls of legislative acts and resolutions in their possession these officers were authorized to furnish the printer designated by the legislature true and correct

copies for the press. Thus each sessional volume has been issued by public authority, paid for out of the public treasury, and distributed usually within a period of three months after adjournment.

The session laws of Iowa can be found in books of various sizes and bindings: the short "half binding" or paper board and pamphlet editions of the early years gave way in 1874 to rather larger pamphlet or sheepskin volumes "printed in pages of the same size, and, as near as may be, of the same style, type, and appearance" as the *Code of 1873*.⁷ In recent years, however, they have been required to match the official sheep-bound *Code of 1897* which is a quarto publication.⁸

ARRANGEMENT OF LEGISLATION IN SESSIONAL VOLUMES

The products of legislation in Iowa have been arranged and edited in accordance with regulations prescribed by the legislature itself—a practice that was inaugurated by the First Legislative Assembly of the Territory. In 1839 the Secretary of the Territory was empowered to prepare for publication the expressions of the legislative will, together with an index and marginal notes explanatory of the contents, and to place at the beginning of the book "a complete table of contents, the declaration of independence, articles of confederation and perpetual union, constitution of the United States, with the amendments thereto, the ordinance of Congress, July 13, 1787, and the organic law, entitled, 'An act to divide the Territory of Wisconsin, and to establish the Territorial Government of Iowa,' approved, June 12, 1838." Following these instructions the Secretary arranged the laws under their proper heads, in alphabetical order, according to their subject-matter, corrected them by the

enrolled bills deposited in his office, and superintended their printing.⁹

The first volume of session laws thus published is unique in Iowa history by reason of its contents and arrangement. Sometimes referred to as the first Iowa code, it presents the enactments of the legislature under such definite index words as Abatement, Apprentices and Servants, Arbitrators and Referees, Attachments, Bail, Banking Associations, Bills of Exchange, Blacks and Mulattoes, Boats and Vessels, and concludes with laws relative to Vagrants, Venders of Provisions, Wills and Administrations, and Worshipping Congregations.

Subsequent sessional volumes are less bulky because they contain only the enactments of the legislature. They also differ in arrangement. One notes, for instance, that statutes are set forth by number in the order of their approval by the Governor, and at the end of the volume, preceding the index, resolutions and memorials are arranged consecutively in the same way. Printed thus in chronological order and labeled "[Chap. 1.]", or "(Chapter 1.)", or "Chapter I", or simply and generally "Chapter 1", "Chapter 2", and so on, according to the English practice, every formal legislative utterance is published with a distinctive identification mark. Furthermore, for the benefit of those who are interested in the history of a law, every enactment since 1874¹⁰ bears another mark showing the house of its origin and the order of its introduction. For example, "[S. F. 1.]" and "[H. F. 17.]" means that the first bill filed in the Senate and the seventeenth in the House of Representatives underwent all the formalities necessary to make them law.

The chronological method of publishing the session laws was discontinued in 1888: in the volume for that

year (as in all later ones) the statutes although presented in consecutive numerical order by chapters are grouped under such general topics as Cities, Railroads, Courts, Counties, Elections, Mining, Schools, Health, Intoxicating Liquors, State Institutions, Merchandise, Miscellaneous Appropriations, Legalizing Acts, Temporary and Private Acts, Joint Resolutions, and Concurrent Resolutions. Subsequent sessional volumes, however, have usually been divided into from three to six parts, general laws always appearing first and for convenience arranged, since 1897, according to the order of the titles, chapters, and sections of the code published in that year.

The method of arrangement above described gave way in time to another system not unknown in other American States. In 1915 the General Assembly, observing the inconvenience caused by the accumulation of law in the Code, the Code Supplement, and many sessional volumes, passed a statute which provided for the discontinuance of the sessional volume and substituted a new book known as the *Supplemental Supplement to the Code of Iowa*. In it are published all laws of a general and permanent nature, and to them will be added in the future all similar statutes.

The subject-matter of the new biennial cumulative supplement is arranged to correspond with the titles, chapters, and sections of the *Code of 1897*, so that all the important statute law on a given subject may for the first time be easily accessible to laymen, lawyers, and legislators alike by turning to the same section number in the Code, the Supplement, and the Supplemental Supplement. Matters will be still more simplified when, as contemplated, the Code and the Supplement are consolidated into a single volume. Under the plan of publication thus

established all general session laws dealing with new subjects of legislation necessarily receive numerical designations not to be found in former code publications. Furthermore, legalizing acts, resolutions, and temporary appropriation acts are not included in the new volume, but a separate pamphlet containing the latter two groups of enactments was published under the authority of the Secretary of State.

It may be stated in conclusion that, although the chief session laws will henceforth be published in a way generally satisfactory to the lawyers of the State, it is believed that an inexpensive edition of the session laws and resolutions, if published in the order of their passage and approval by the Governor, would answer an important though limited demand:¹¹ statutes printed as passed would lighten the labors of judges and of other research students who are now sometimes under the necessity either of drafting a statute by assembling its parts or of writing to the proper State officer for a copy of the enrolled bill which they desire.

MISCELLANEOUS CONTENTS OF SESSIONAL VOLUMES

The editor of the session laws of Iowa has generally published as the table of contents a list of the titles of acts, memorials, and resolutions in the order named; and in accordance with a State constitutional provision he has included at the end of each volume the State Auditor's account of the receipts and expenditures of the public money. Moreover, in the page margins¹² of the statutes enacted down to 1898 there appear in small type the editor's notes briefly indicating the contents of the law: since 1898 these marginal notations have been displaced by catch-words¹³ printed for the same purpose in black face

type at the beginning of each section, thus conforming to the example set by the *Code of 1897*.

It is a curious fact that until the year 1915 no provision had ever been made for making permanently accessible to the public an amendment to the State Constitution ratified by the voters at a popular election. In other words, the changes effected in the fundamental law of the Commonwealth were never officially recorded for general circulation with the session laws as they might have been. This difficulty, however, is obviated by the publication of the *Supplemental Supplement* in 1915, which like the *Code of 1897* itself, reserved several pages for matters of constitutional import. It is well to state in this connection also that the new biennial cumulative supplement differs from all its predecessors in one other respect: distributed in their appropriate places it contains a mass of fine print annotations of all court decisions which do not appear in the *Code of 1897* or the *Code Supplement of 1913*. Accordingly, the reader has before him what the statute law of Iowa really is: the will of the people expressed by the legislature and expounded by courts of justice.¹⁴

INDEXES OF SESSIONAL VOLUMES

In concluding this cursory characterization of the volumes which contain the session laws, a word should be said about the indexes. It is clear beyond doubt that the contents of a book are not readily accessible unless the index helps one quickly to find what he wants. That the indexes compiled for the volumes of Iowa statutes are not dependable can be testified to by all researchers who have had occasion to consult them extensively. Ranging from four to sixty-six pages in length, the indexes are

uniformly defective — although later ones show a vast improvement in arrangement and content. Much of the law contained in the earlier volumes is lost if one relies upon the general index. To find a point of law in any sessional volume, early or recent, the safest plan is to finger every page consecutively and scan its contents. The big index prepared in 1915 as a key to the whole statute law as found in the *Code of 1897*, the *Code Supplement of 1913*, and the *Supplemental Supplement of 1915* is a source of much confusion even to lawyers, and it will continue to be such if it is republished biennially with the cumulative supplement. That “the manner in which the sessional volume is edited, annotated and indexed, is not a matter of trifling consequence”¹⁵ seems to have been impressed upon the General Assembly of Iowa; but of no editor thus far can it be said that he has well acquitted himself of “the tedious and sublunary task of compiling an index.”¹⁶

DESIGNATION OF LEGISLATIVE UTTERANCES

One glance at a complete collection of the session laws of Iowa suggests that a vast deal of legislation has been enacted by the people’s representatives and the Governors. Equally striking, and sometimes confusing, to the superficial observer are the terms used to designate the contents of the statute books. The bound compilations of the acts and resolutions of the various Assemblies, Territorial and State, display upon their backs the uniform label, “Laws of Iowa”, as well as the year of enactment and, in the case of recent volumes, the legislative author as, for example, “Laws of Iowa, 35 G. A. 1913”.

The style of the title pages is by no means so uniform

and simple. The earliest inscription, "The Statute Laws of the Territory of Iowa", lasted but one year, giving way to "Laws of the Territory of Iowa". Soon there appeared the brief title, "Laws of Iowa", and after the admission of Iowa into the Union in 1846 the more descriptive title, "Acts, Resolutions and Memorials". Then, for a considerable period the regular designation was "Acts and Resolutions"; and this was slightly altered in 1909 so as to read, "Acts and Joint Resolutions". Finally, owing to the revolutionary change inaugurated in the arrangement and the publication of the laws of 1915 the title page of the last volume of session laws bears the words, "Supplemental Supplement to the Code".

An inspection of the contents of these volumes of Iowa statutes quickly reveals the fact that most expressions of the legislature's will are entitled "acts" and only a few are styled "resolutions". Sometimes a distinction is drawn between "joint resolutions" and "concurrent resolutions", but so far as their contents are concerned the same purposes may be accomplished under either title. Moreover, despite the difference between the introductory words of an "act" and those of a "resolution", the latter in some cases has the same effect as the former. Appended to the laws enacted in several early sessions of the General Assembly are resolutions addressed to Congress or to Iowa members of that body, but these "memorials" are merely appeals for Federal aid of one kind or another. Such are the names ascribed to the productions of Iowa lawmakers. Whether one calls a given piece of legislation "a law", "an act", or "a statute" really makes very little difference: according to common usage these terms are, after all, synonymous. (See also Mr. Patton's paper on the *Methods of Statute Law-making in Iowa* in this volume, pp. 189-195.)

CLASSIFICATION OF RESOLUTIONS

An examination of the sessional volumes shows various attempts on the part of the editors to classify the legislative output. Statutes and resolutions have always been separately grouped and numbered. In some of the statute books, particularly those of later years, a distinction has been recognized by the separation of "joint resolutions" from "concurrent resolutions" and "simple resolutions", while in other volumes these three types of legislation have been calendared indiscriminately. By a more recent practice, however, only Senate joint resolutions and House joint resolutions are published, thus indicating the place of origin.

It may be explained in this connection that a "simple resolution" is merely the expression of the wishes or feelings of the members of a single house of the General Assembly, as illustrated in the case of the following Senate resolution:

That the recent afflictions of Hon. James G. Blaine, Secretary of State in the death of a beloved son and daughter; and the sad and tragic bereavement of Hon. B. F. Tracy, Secretary of the Navy in the death of his wife and daughter profoundly move the members of this body, and we hereby tender our deepest sympathy to the families thus doubly bereaved. Be it further

Resolved, That these resolutions be spread upon the Senate Journal; and that copies thereof be sent by the Secretary of State to the Hons. James G. Blaine and Benj. F. Tracy.¹⁷

"Joint resolutions" and "concurrent resolutions" may be distinguished by the words introducing them, not by the objects which they seek to accomplish, since both are used to make law or to express the opinions of legislators. An example first of a joint resolution and then of a concurrent resolution will suffice to illustrate the character of these legislative expressions:

Be it resolved by the General Assembly of the State of Iowa:

That the governor of the state, Hon. Buren R. Sherman, be and he is hereby authorized and directed to procure to be executed in oil by competent artists the portraits of Hon. Ralph P. Lowe one of the former governors, and of Hon. Augustus C. Dodge, one of the former representatives and U. S. Senators of the State of Iowa, Governor Chambers and Governor Glark [Clarke], territorial governors, and all deceased state governors which the state does not already possess, with the appropriate mounting, to be placed in the executive chamber or other appropriate place in the capitol, and to meet the cost thereof, there is hereby appropriated out of any money in the treasury not otherwise appropriated, a sum sufficient to pay the same to be paid upon warrants drawn upon the treasurer by the auditor upon the order of the governor.¹⁸

Resolved by the Senate, the House concurring, That the action of congress in partially repealing what is known as the "salary grab" law meets our hearty approval.

And further, That we feel honored by the stand taken in this matter by senators and representatives of Iowa in congress, and most earnestly request that they continue in the good work until all of said salary-grab law, so far as can be legally done, shall be repealed.¹⁹

CLASSIFICATION OF STATUTES

Although legislative enactments are generally divided into classes according to the nature of their subject-matter, one does not find them so arranged in the early volumes of the session laws of this State. In the year 1860 a separate edition of "special acts" and "appropriation acts" was published, while the "general laws" appeared in a book which presented all the revised statutes of Iowa, namely, the *Revision of 1860*. In 1872 the General Assembly made a two-fold classification of the laws enacted:²⁰ "private, local, and temporary acts" were ordered

to be printed as Part I and "general and public acts" as Part II. The separate publication of these two bodies of law ceased in 1876.

Not until 1888 did printed statutes again appear according to some sort of classification. After 1890 they were grouped in such well-defined classes as "general acts", "appropriation acts", "legalizing acts", "private, local and temporary acts", or "special acts". The *Code of 1897*, moreover, makes a reference to "acts of a private nature" and "acts of a general nature".²¹ Finally, the General Assembly decided that only the statutes of a "general and permanent nature" enacted in 1915 and future years should find a place in the biennial cumulative supplement, and "No appropriation acts, legalizing acts or joint resolutions of a private nature shall be printed in the code supplement, but said acts, except legalizing acts, shall be printed in a separate volume bound in paper covers and distributed as other laws".²²

The various qualifying adjectives and phrases used above are doubtless somewhat confusing to most persons; and so some explanations and simple examples will be given to illustrate distinctions.

"General acts" or "public acts" have been defined as affecting "either the whole community, or large and important sections, the interests of which may be considered identical with those of the whole body." The following are examples of statutory provisions of a general or public character:

It shall be unlawful for any person, firm or corporation to bring into, or cause to be brought into the state of Iowa, any apiary or honey bees infected with foul brood or other infectious disease, or bee-destroying insects.²³

That all persons shall be regarded as practicing dentistry within the meaning of this act who, for a fee, salary, or reward, paid directly or indirectly, either to himself, or some other person, shall diagnose, or profess to diagnose, or treat, or profess to treat, any of the diseases or lesion of the oral cavity, teeth, gums, or maxillary bones, or who shall extract teeth, or prepare or fill cavities in the human teeth, correct, or attempt to correct, malposition of teeth or jaws, or supply artificial teeth as substitutes for natural teeth, or administer anaesthetics, general or local, or give prophylactic treatments, or engage in any other practice included in the curricula of recognized dental colleges. . . .²⁴

“Appropriation acts”, as the name indicates, provide for grants of money from the State treasury. Some of these acts are temporary in character, while others are permanent, as the following extracts clearly show:

To the state board of education for telephone messages, telegrams, express charges, stenographers and other necessary items to be expended by said board during the biennial period ending July 1st, 1915, the sum of five hundred dollars (\$500.00), which sum is to be paid in accordance with the provisions. . . .

That there be and is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, for the further support of the State University in its several departments and chairs, and in aid of the income fund, and for the development of the institution, the sum of twelve thousand, five hundred dollars (\$12,500) annually hereafter. . . .

“Legalizing acts” aim to give permanent force to official or non-official acts of doubtful legality or known illegality. These statutes are usually special in their nature; but they sometimes affect a considerable portion of the public. Examples of this sort of legislation are:

That all acts of the city council of the city of Cedar Rapids, Iowa, and of the auditor, treasurer and board of supervisors of

said Linn county, Iowa, in assessing and levying against the taxable property of said city in the year 1908 four mills on the dollar for the park fund of said city be and the same are hereby legalized and made valid as though the law had been fully complied with, provided, however, that this act shall not affect pending litigation.

The said First Congregational Church of Toledo, Tama County Iowa, is hereby declared to be Incorporated and the acts of said society in reincorporating, and [are] hereby legalized and said reincorporation of said Church on December 14th 1877, is hereby declared to be legal and to be as effectual as though the same had been made within the term of Twenty years from its original organization.

“Temporary acts” are passed to meet emergencies and become inoperative when their provisions have been complied with. Particular occasions have been prepared for by the creation of special commissions such as the “Iowa Columbian Commission” to make a creditable exhibit of the State’s resources at the Chicago World’s Fair, and the “Code Supplement Supervising Committee” of 1913. When the persons constituting such commissions or committees had performed their duties, the laws had spent their force.

“Special acts” include “those which are called private, local or personal, as they relate to private interests, and deal with the affairs of persons, places, classes, or other bodies which are not of a public character.”²⁵ The area or population of the State which they affect is very limited. Statutes legalizing invalid elections and the incorporation of towns are illustrations of local acts, as also is the following:

That the name of the county seat of Boone County Iowa shall be known and designated as Boone Iowa instead of Boonsboro, Iowa.

“Private acts” simply concern a private corporation or person, as for example:

A right of way is hereby granted to the Omaha, Council Bluffs & Suburban Railway Company over and across the lands of the Iowa school for the deaf, located near the city of Council Bluffs, Iowa, subject to the conditions of this act as hereinafter provided.

That the governor of the state of Iowa and the secretary of state be, and they are hereby authorized, empowered and directed to issue to said Albert Husa a land patent in the usual form to lot seven (7), block fifty-five (55) of Iowa City, Iowa, which shall constitute an absolute conveyance of all right, title and interest which the state of Iowa may have in and to said premises.

III

FORMAL FEATURES OF LEGISLATIVE UTTERANCES

PREFIXED to every Iowa statute in accordance with provisions of the State Constitution are two essential features: the title and the enacting clause. Many laws, moreover, reveal a third formal feature, one which in no case is necessary to establish the validity of the act, namely, the preamble. (For a discussion of the formal features of legislative utterances viewed from the standpoint of the process of law-making see Mr. Patton's paper on the *Methods of Statute Law-making in Iowa* in this volume, pp. 199-203.)

UNOFFICIAL TITLES

A glance at any volume of session laws discloses the fact that practically every resolution or statute has two headings or titles. The first is usually printed in capital letters, indicates the general subject on which the legislature has expressed its will, and is unofficial in the sense that it was selected by the editor of the volume and not by the lawmakers. Of this short, descriptive title one finds such examples as Constables, Divorces, Education, Ferries, Gaming, Mills and Millers, Roads, Steamboats, Itinerant Venders of Drugs, Display of United States Flag, Minimum Wage for Teachers in Public Schools, Prohibiting Candidates from Making Political Promises, and Establishment of Laboratory for Manufacture of Hog Cholera Serum.

The second title, printed in small type, constitutes a more specific reference to or summary of the contents of an act or resolution, and is the heading officially designated by the legislature itself. Since the editor's title generally signifies little except a convenient index to the subject-matter of a legislative utterance, it will be the more profitable to examine the official titles — first, of resolutions, and then of statutes.

OFFICIAL TITLES OF RESOLUTIONS

The captions of resolutions, whether of a law-making character or not, do not conform to any single standard, as can be seen from the variety illustrated by the following examples chosen at random :

Preamble and Joint Resolution relative to the improvement of the Des Moines river.

Resolution providing for the payment of the rent of the building occupied by the Legislative Assembly.

Joint Resolution in relation to the establishment of a Custom-house and Marine Hospital in the city of Keokuk.

Joint Resolution to Congress, asking the enlargement of the boundaries of the State of Iowa.

Joint Resolutions on the subject of naturalization laws.

Joint Resolution for an appropriation to build a Custom-house in the city of Burlington.

Joint Resolution to provide for the printing of the Report of the State Geologist.

Concurrent Resolution Relative to Compelling Railways to receive and transmit Grain without passing through the Elevators in Chicago.

Joint Resolution to amend the constitution relating to legis-

lative authority; providing for the initiative and referendum with reference to the enactment of laws, or laws enacted by the general assembly, and amendments to the constitution.

Joint resolution fixing the number and compensation of employees in the department of state at the seat of government.

These different ways of stating titles were employed very much in the early years, but the prevailing style in recent times is the use of the infinitive or the participle as shown in the two examples last cited. It may be added that many resolutions are entirely devoid of titles,²⁶ but this is not a serious defect, since neither statute law nor constitutional law is contravened.

OFFICIAL TITLES OF STATUTES

What has been said about the form of the captions of resolutions might be repeated with reference to the titles of statutes: no particular method of expression has stood out superior to others, although the tendency of recent legislative usage is away from variety toward uniformity. The same kinds of titles recur in all the volumes of session laws, and may be illustrated by the following:

An Act concerning water crafts found adrift, lost goods, and stray animals.

An Act to regulate the interest on money.

An Act in relation to Bonds and other securities.

An Act for the Election of Constables, and defining their duties.

An Act relative to Proceedings in Chancery.

An Act exempting soldiers from military duty.

An Act supplementary to "An Act to locate the Seat of Government of the Territory of Iowa, and for other purposes."

An Act amendatory of the several acts regulating the election and duties of Sheriffs.

The words immediately after "An Act" may be taken to exemplify a special type of title. Recent statutory captions show a preponderating preference for the infinitive and the participle — indeed, the use of other parts of speech is already exceptional.²⁷

CONSTITUTIONAL REQUIREMENTS AS TO TITLES

Legislative practice during the Territorial period dictated the necessity of a title for every statute. Custom in the matter became law by the sections of the State Constitutions of 1846 and 1857 which require that every act "shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title."²⁸ The caption is, therefore, the vitalizing portion of every law, and where, as occasionally happens,²⁹ a bill without a title passes the General Assembly and the Governor and finds its way into the sessional volume, the enactment is totally void: it is a headless trunk — dead. There is a record of at least two instances when bills were vetoed on the ground of unconstitutionality because they embraced subject-matter not expressed in the title.³⁰ Accordingly, the General Assembly is always under the necessity of seeing to it that the caption reflects the character of the legislation subjoined: the title must be a key and a clue to the contents of a statute, designed to prevent hodge-podge or log-rolling legislation, surprise or fraud, and to fairly apprise the people of the subjects of legislation.³¹

So far as the writer is aware, no title contains references to two or more separate and distinct objects in the body of a statute, in which event the statute would be

wholly null. There are several cases, however, where the title refers to one object and the statute provides for two objects, with the result that the following provision of the State Constitution has been invoked: "if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

A few examples of titles which contravene the law will explain this point. The caption, "An Act to Legalize the Organization of the Independent School-District of Epworth, County of Dubuque, Iowa", does not cover the part of the statute which seeks to legalize the acts of the *de facto* officers of the district.³² If the title is restrictive, other matters are excluded from the statute, as in the case of "An Act to amend the charter of the city of Keokuk": the section which attempts to make valid certain illegal acts of the city council and certain elections held by the people is not germane to the contents of the title.³³ The following title does not exactly indicate the subject of the enactment, but one guesses that it is peddlers: "An Act to repeal the law as it appears in Section 1347-a of the Supplement to the Code relating to the vocation of peddlers and to enact a substitute therefor"; in fact the substitute taxes both peddlers and "itinerant vendors", and since the latter do not belong to the same category as peddlers but constitute a distinct class of people, the law was held to be void as far as it related to them.³⁴

BROAD TITLES

By reason of the constitutional requirement the question suggests itself: Do titles convey in a few words the general drift, the most important features of the act, or are they profuse attempts to state the details of the stat-

utes which they head? Occasionally a caption is too broad, covering more matters than are contained in the body of the law. This usually happens when a bill in its course through the General Assembly is shortened and no corresponding change is made in the original title. Under the title, "An Act requiring a report from the state university, state college of agriculture and mechanic arts and the state normal school, and appointing a committee to inspect and report upon said institutions", the statute is wholly silent as to the committee.³⁵ The same thing occurred in a statute entitled, "An Act to amend section eight hundred and fifty-two (852) of the supplement to the code, and sections eight hundred and fifty-three (853) and eight hundred and fifty-eight (858) of the code, relating to park commissioners, their powers and duties": the body of this act makes no reference to section 858 of the code.³⁶ Such defects, however, are not fatal to the validity of a law.

Despite the exemplary titles of early statutes, the tendency of recent titles is shown in the following:

An Act to prohibit the sale, keeping for sale, loaning, giving away or carrying of certain dangerous weapons, to prevent the carrying of concealed weapons, except in specified cases when a permit is issued therefor; to provide punishment for the violation of the provisions hereof. [Additional to chapter two (2) of title twenty-four (XXIV) of the code relating to offenses against lives and persons.]

The part of the above caption which precedes the brackets is unnecessarily profuse and detailed and might simply read: "An Act relative to concealed and dangerous weapons". A title need not summarize the contents of the whole act — it must express the subject of the statute, but need give no inkling of information as to related

matters. Where the statute is intended to give all the law on a subject, for instance, in forty-two pages, the proper title is well stated in general terms as, "An Act relative to Wills and Testaments, Executors and Administrators, and the settlement of estates".

Sometimes one runs across a method of wording titles that is to be condemned, as for example:

An Act relative to Divorce, Alimony and other purposes.

An Act to prevent and punish the owners and masters of Steam Boats committing trespass upon the property of persons living in this Territory, and for other purposes.

An Act to prevent the destruction of notices, advertisements, &c.

Abbreviations and the phrase, "for other purposes", cover a multitude of sins and deserve to be omitted. Moreover, it is pertinent to ask whether or not, in case an act contains a provision for going into effect by publication, this fact should be alluded to in the caption. The emergency clause is not customarily mentioned in the titles of Iowa statutes, and although it is not required by the Constitution, "there can still be no objection to calling the legislature's attention in this way to the fact that the act is to be given immediate effect."³⁷

NARROW TITLES

Sometimes when the title does not contain allusions to all the important provisions of a law, it is said to be too narrow; at the same time it is obviously impossible to include in the caption a reference to every portion of a lengthy statute. When the *Code of 1851* was adopted as a single bill by the legislature, the action was simply designated as "An Act for revising and consolidating

the general statutes of the State of Iowa". It has been repeatedly decided that a title which mentions the main subject of an act need not touch upon allied matters, as where "An Act to amend the act to incorporate the city of Muscatine" makes provision also for the enlargement of the city's corporate boundaries;³⁸ and where "An Act to extend the boundaries of Kossuth county, and to locate the Seat of Justice thereof" not only united Kossuth, Bancroft, and the northern half of Humboldt counties, but also attached the southern half of Humboldt to Webster County.³⁹ In neither of these cases does the caption indicate fully the effects of the law. One more example will probably suffice to make this matter clear: the title, "An Act to revise, amend and codify the Statutes in relation to roads, bridges and ferries, and the destruction of thistles", expresses the main subject of the law, and if the act in addition provides a fund for road purposes, that is "matter properly connected" with or germane to the chief object of the act and the title need make no reference to it.⁴⁰ Narrow titles are not objectionable unless they are palpably obscure: the Supreme Court of Iowa by a process of liberal construction has never refused to sanction them.⁴¹

The language of many titles is so general that one can not tell without reading a statute what particular phase of a broad subject is dealt with, and yet the title is constitutionally sufficient. Such a caption as "An Act in relation to certain State roads" becomes more specific if changed to read: "An Act establishing, vacating, and relocating certain State roads",⁴² because that is what the body of the law actually does. The words, "An Act concerning costs and fees", suggest that the statute treats of the whole subject, and so it does in fourteen pages; but

so far as legislative practice is concerned, the language might just as well cover an act of half a page. Other titles like "An Act relative to religious societies" and "An Act in relation to Limited Partnerships" may well be expected to present the whole law on these two subjects: if they do not, the use of particular words after "relative to", "in relation to", or "concerning" would be more appropriately descriptive of the contents of the statute. To be sure, brief titles are desirable, but they need not be so general as to conceal the specific contents of the acts which they are designed to label — the addition of a few more words usually makes the desired difference. The following short descriptive titles are recommended:

An Act Defining the Duties of County Surveyors.

An Act to Provide for the Payment of Bounties for Killing Crows.

TITLES OF AMENDATORY AND REPEALING STATUTES

The phraseology of captions listed in any sessional volume of the past forty years is very much more detailed than that of earlier ones, owing partly to the complicated character of modern legislation, but more particularly to the statutory requirement that the titles of statutes passed in amendment of or addition to any chapter or section of the Code or previous act shall refer to the number and the subject of the statute added to or amended. When the title as it came from the General Assembly failed to do so, the Secretary of State was in duty bound to supply the omission.⁴³ This regulation aims no doubt to prevent the indefiniteness which once characterized such common captions as the following:

An Act to revive a certain act herein named.

An Act to amend Section 1, of Chapter one hundred and twenty-eight (128) of the Acts of the Tenth General Assembly.

An Act to amend code section 2071.

Although these titles were once regarded as sufficient,⁴⁴ they did not indicate the subjects which they embraced, and so one had to turn to the amended act for light. The other early practice of stating the title, though long-winded, is much to be preferred — as for instance, “An Act to amend an act entitled ‘An Act defining crimes and punishments’, approved 16th February, 1843.” Nowadays, however, the reader finds such captions as:

An Act to amend section twenty three hundred and forty-eight (2348) of the code relating to bounty on wolves.

An Act to repeal section three thousand three hundred seventy-nine (3379) of the code and to enact a substitute therefor, relating to the share of surviving spouse.

An Act to amend chapter 132 of the Acts of the Twentieth General Assembly [Bureau of Labor Statistics.]

An Act to repeal section one hundred and forty-four (144) of the Code [Relating to public printing and binding.]

An Act prohibiting members of boards of supervisors and township trustees from making contracts with their respective townships or counties. [Additional to title IV, of the code, pertaining to township and county government.]

The bracketed portions were added by the editor of the session laws as required by statute.

LANGUAGE OF TITLES

That the language of titles does not always conform to the rules of grammar, punctuation, and capitalization is clear from a perusal of any volume of session laws.

At any rate there is no uniformity in these matters. Titles do not always express the ideas struggling for expression. For instance, "An Act defining Crimes and Punishments" defines crimes and fixes punishments; "An Act to prevent and punish the obstruction of Public Roads and Highways" prohibits the obstruction and penalizes those guilty of obstructing; and "An Act to destroy Canada Thistles" provides rules for the destruction of Canadian thistles. Sometimes captions are simply the result of slips as witness the following:

A Bill for An Act To reward the Persons Who Captured the Barber Brothers, the Reputed Murders [murderers] of Marion Shepard.

A bill [An Act] for an Appropriation for the College for the Blind, to enable said College to complete the School Year ending June 14, 1882.

The first words of such titles are clearly superfluous in the statute book, as they are also in the case of "An Act Entitled An Act to Provide for Payment of Co. C, Fifth Regiment, Iowa National Guards."

Of involved, entangling titles there are plenty of examples like the following:

An Act to amend an Act entitled an Act to amend an Act to confer certain powers on towns and cities for school purposes.

An Act to amend and consolidate an Act passed by the Board of Education, December 24, 1859, entitled "An Act to amend an Act entitled an Act to provide a System of Common Schools," and the amendments thereto.

An Act entitled an act declaratory of the meaning of an act entitled an act for extending the time of completion of 75 miles of road by the Dubuque and Pacific Railroad Company, approved 7th March, 1860.

Where, as in the first and the third of these titles, another statute is referred to, quotation marks are useful as an aid to clearness, as in the following caption:

An Act to repeal section 6 of [chapter eighty-six (86)] an act of the Twenty-eighth General Assmbly, entitled "An act to protect game and to provide a fund to pay the expenses and prosecutions under this act," and to enact a substitute therefor.

SHORT TITLES

The reader who has had the patience to wade through the foregoing discussion must be impressed by the fact that in most cases titles are masses of verbiage. Iowa lawmakers of the past have in rare instances felt the need of simplification, and so, for the convenience of citation they have by statutory provision provided short reference titles. "An Act to Protect Crops against the Invasions of Stock" has always been known as "The Stock Act",⁴⁶ or more popularly, "The Herd Law". "An Act relating to negotiable instruments, being an act to establish a law uniform with the laws of other states on that subject, and to repeal sections three thousand and forty-three (3043)" declares near the end that it "shall be known as the negotiable instrument law". The law entitled, "An Act describing and defining negotiable and non-negotiable bills of lading, and providing for the issuing, transfer and endorsement thereof, defining the rights and duties of common carriers and all persons issuing and receiving the same, providing for the shipment and delivery of goods and property thereunder and for conviction and punishment for the violation of the provisions thereof. [Additional to title fifteen (XV) of the code, relating to commerce and trade.]" ends with the statement that it "may be cited as the uniform bills of

lading act". And the act "relating to employers' liability for personal injury sustained by employees in line of duty, fixing compensation therefor, securing the payment thereof, providing for the appointment of a commissioner and defining his duties" is referred to in a joint resolution as "The Workmen's Compensation Act."

Many Iowa statutes bear popular titles: some are still designated by the names of the legislators who introduced them in the General Assembly, as for example the "Cosson Law", the "Whipple Bill", the "Johnson Road Act", and the "Perkins Act"; and a few others go by names descriptive of their contents, as the "Red Light Law", the "Blue Sky Law", the "Uniform Warehouse Receipts Act", the "Five Mile Act", the "Statute of Limitations", the "Statute of Frauds", the "Criminal Practice Act", the "Civil Practice Act", and the "Corrupt Practices Act". The English Parliament, it is interesting to note, has since 1892 given every law a short title in addition to its formal long title — indeed, all public general statutes enacted since 1707 have been similarly treated to facilitate reference. Each short title, however, ends with the year date of its enactment as the "Courts of Justice Building Act, 1865" to distinguish it from a similar law passed at another time.⁴⁶ This feature, it is submitted, is valuable, because a reference simply to the "Blue Sky Law" of Iowa does not take account of the fact that the General Assembly enacted one such statute in 1913 and another in 1915 to meet certain constitutional difficulties in the first.

Jeremy Bentham's plea for titles of two, three, four, or at the outside half a dozen words conveying information without pretension, thus avoiding the confusion and darkness of titles "in twice, thrice, four times, or half a

dozen times as many lines'' is worth remembering, and his quaint praise of short titles is worthy of quotation:

Blessed be he for evermore, in whatsoever robe arrayed, to whose creative genius we are indebted for the first conception of those too-short-lived vehicles, by which, as in a nutshell, intimation is conveyed to us of the essential character of those awful volumes, which, at the touch of the sceptre, become the rules of our conduct, and the arbiters of our destiny. . . .

How advantageous a substitute in some cases — how useful an additament in all cases, would they not make to those authoritative masses of words called *titles*, by which so large a proportion of sound and so small a proportion of instruction are at so large an expense of attention granted to us. . . .⁴⁷

CONSTITUTIONAL ENACTING CLAUSES

Printed in italics just below the title or below the preamble if there is one, stands the enacting clause, the second formal and essential part of every statute. But the position nowadays reserved for it is not that of former times, when it appeared as follows:

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa; It shall be unlawful, etc.*

In accordance with a practice inherited from England, the clause was sometimes repeated wholly or in part at the beginning of subsequent sections of the act in such words as "*And be it enacted*", or "*And be it further enacted*". Perhaps, on account of the feeling that statutes should not be encumbered with useless verbiage, this repetition in Iowa statutes ceased in the year 1876. Since then the enacting clause has preceded the first section, thus serving to enact into law all the sections of the act.

It was by means of a concurrent resolution that the Territorial legislators decided to enact all bills into law by the use of the following formula:

*Be it enacted by the Council and House of Representatives of the Territory of Iowa.*⁴⁸

The style prescribed by the State Constitution has been followed since 1846, namely:

*Be it enacted by the General Assembly of the State of Iowa.*⁴⁹

But even so, there are instances where the fundamental law is not complied with, as for example:

*Be it enacted by the Senate and House of Representatives of the State of Iowa.*⁵⁰

Since the exact words of the Constitution were not used in this last instance, law was not enacted by the action of the legislature. A defective enacting clause or none at all means that the work done on a piece of proposed legislation accomplishes nothing. Governor Kirkwood, for instance, vetoed⁵¹ a legislative measure because it lacked that which could have given it life — an enacting clause. A bill without such a clause passed the Senate and two committees of the General Assembly in 1909 before the omission was discovered and the usual words were inserted. It is said that the Senate killed the woman suffrage and the black plague bills of 1909 by striking out this same necessary clause.⁵²

UNUSUAL ENACTING CLAUSES

It is necessary to call attention to some legislative curios. Several resolutions are recorded in which the usual words "Be it resolved" have either been knowingly abandoned or dropped by mistake in favor of the statutory enacting words, "Be it enacted".⁵³ The result is a union of resolution and statute, as in the following:

Joint Resolution authorizing the joint committee on retrenchment and reform to employ expert accountants and efficiency engineers, to institute reform, and appropriating funds therefor.

Be it enacted by the General Assembly of the State of Iowa.

Two joint resolutions proposing amendments to the State Constitution are similarly introduced. The General Assembly's ratification of the seventeenth amendment to the Federal Constitution, providing for the popular election of United States Senators, was preceded by the unique combination:⁵⁴ "*Be it resolved and enacted*". It is difficult to explain such an irregularity as the first one shown above, especially in the light of the constitutional requirement that appropriations shall be "made by law". The legislators seem to construe these words as not excluding resolutions.⁵⁵ Moreover, a statute authorizes the legislature to fix the rate of the annual tax levy either "by statute or joint resolution".⁵⁶ Legislative practice in these matters is decidedly unsettled. Although there are precedents in favor of resolutions, at least two Governors voiced their objections to law-making resolutions which lacked the usual enacting words of the Constitution.⁵⁷

PREAMBLES

Many statutes and resolutions are introduced by preambles — statements of the grounds or causes of the expression of the legislative will. They remind one of book prefaces most of which, it has been said, "are effectually apologies, and neither the Book nor the Author one jot the better for them. If the book be good, it will not need an apology; if bad, it will not bear one". The same thought occurs with reference to preambles: most statutes do not need them. In the case of a law which aims to accomplish some special or unusual thing, however, the preamble serves as a running argument to open the minds of legislators and others, shows what circumstances existed at the time of passage, and helps to make the appli-

cation of the law clear. It affords a clue to the legislature's intention and guides the reader in that it lays bare the subject-matter, the scope, and the object of the statute or the resolution to which it is prefixed.

Coming just after the title and preceding the words of enactment, the preamble in no sense forms a part of the statute. To this general rule, however, the legislature of Iowa has made exceptions. In an act which appropriates money for the payment of a salary, one reads the following:

Be it enacted by the General Assembly of the State of Iowa:

THAT; WHEREAS, The Honorable John Shane was in the year 1878 elected judge of the district court for the eighth judicial district of Iowa for the term commencing on the 1st day of January 1879 and ending on the 1st day of January 1883; and

WHEREAS, By reason of the severe labors and duties of his office he was totally and permanently prostrated and disabled from performing the duties of his office and his health has become permanently impaired in consequence of which he was compelled to resign his said office; and

WHEREAS, The Honorable James D. Giffen was appointed by the governor to fill the unexpired term for one and one half months.

SECTION 1. Therefore, be it enacted that the sum of two hundred and seventy-five dollars

Again, Section 132 of a statute on wills begins as follows:

And whereas it may be often necessary to enable the representatives of persons deceased to perform the engagements entered into by such deceased persons for the transfer of real estate, *Therefore, be it further enacted*

There are also instances where the preamble, the enacting clause, and the statute in whole or in part appear in the first section.⁵⁸

The almost invariable form of preambles, as already indicated, is a series of separate paragraphs or clauses, each of which commences with the word "Whereas". They are connected by means of the conjunction "and", and the last one ends with "therefore", or "now therefore". Occasionally a plain recital or explanation without the hackneyed "whereas" precedes a resolution addressed to Congress, and the simple narrative form thus illustrated comes as a welcome relief to the reader who is accustomed to the confusing and long-winded style resulting from the constant repetition of "whereas". The same General Assembly has been known to employ both forms of introductory statements.⁵⁹ After one has read two or three "whereas" paragraphs, the mind is ready to learn the contents of the statute: if one is obliged to read more, he becomes fatigued before reaching the enactment. Too many such clauses greatly irritate the reader. The average preamble contains six or seven of them — those of ten or twelve are not uncommon.⁶⁰ Granted that a preamble is necessary, could not the facts usually so arrayed, if submitted in straightforward English, be made less tiresome and more effective by a simple recital?

As introductions to special and legalizing acts, preambles have always been fashionable. For instance, special appropriation acts of a few lines are preceded by the following tributes to the legislature's generosity:

WHEREAS, on or about June 5th 1883 George Henry Kresting in Bremer County Volunteered to assist in the arrest of two desperados known as Barber Brothers, who were fleeing from Peace officers; and

WHEREAS, when assisting in the arrest of the said Barber, George H. Kresting was shot by a pistol bullet fired by one of the

Barbers, from the effect of which he soon afterward died; and

WHEREAS, said George Henry Kresting was at the time of his death the only son and the support of his parents, who were then aged and needy, and who were largely supported by said son who was single and resided with his parents: and

WHEREAS, Said parents are now aged and disabled: and

WHEREAS, the 20th General Assembly appropriated to each of the other persons who were disabled in assisting in the capture of the said Barber Brothers, the sum of two hundred dollars: therefore,

WHEREAS, on or about the last week of July, 1910, M. O. Clemens, while acting in this [his] capacity as engineer in the said sanitarium [mentioned in title], received a tubercular infection on his right hand from the sputum of inmates of said institution, resulting in serious damage to his health and physical injury, now, therefore,

Another special law is prefaced by an interesting explanation as follows:

WHEREAS, the Cedar river is a meandered stream, and

WHEREAS, the title to the bed and banks of such stream is claimed by the state of Iowa and under the control of the legislature, and

WHEREAS, the said stream divides the city of Waterloo into two approximately equal parts, one of which is known as East Waterloo and the other as West Waterloo, and

WHEREAS, the said stream is already spanned by two reinforced concrete Melan arched bridges, one of which is located on Fourth Street and the other on Fifth street across the said river, and

WHEREAS, it is desired to construct over a portion of the Cedar river between said bridges a business men's coliseum and convention hall, whose use will be devoted to conventions and gatherings of the general public, and

WHEREAS, the same can be constructed in such a way as not

to materially impede the flow of the water of such stream, now therefore

The short preamble of a legalizing act of three sections reads:

WHEREAS, doubts have arisen as to the legality of the incorporation of the town of Sharpsburg, Taylor County, Iowa, the election of its officers, the passage of its ordinances and resolutions, the signing of the same by the mayor and the record thereof;

Preambles to laws of a public nature are not as numerous as to the classes of enactments above described, but brief examples may be selected from an act creating a special tax commission and an early bird law:

WHEREAS, The Methods of raising revenue are generally recognized as being burdensome, unequal, and unfair in their operations, and

WHEREAS, Some system of taxation should be devised that will command the respect and confidence of the people, and,

WHEREAS, It is impossible to amend or change the present revenue laws without re-writing, revising and reforming the same, and such work is impracticable during a session of any general assembly, therefore:

WHEREAS, The birds of this State are useful to the farmer, gardener, and horticulturist, from the great amount of noxious insects which they annually destroy; and,

WHEREAS, It is the judgment of this General Assembly that their wanton and useless destruction should not only be strictly prohibited, but that every encouragement be given for their rapid propagation; therefore,

LANGUAGE AND USE OF PREAMBLES

It can be seen from the above examples that the language of preambles generally is very formal and stilted.

Slow-moving and long-winded arguments accompanying the law, they hark back to a day when they were more popular than now. Where the periodic form of construction is employed, the long preambles become very ponderous indeed. The repetition of such words as "whereas", "said", "same", "therein", "thereof", "thereto", and "such", and the repetition of the same thought or idea looked at from different points of view wearies the reader beyond measure. The retention of these words is quite unnecessary and their omission would greatly improve the language of preambles, while the boiling down of a lengthy preamble to a simple statement would help a great deal more to make them fit for consumption. Erratic punctuation characterizes the preambles found in any volume of the session laws: the value of comma, semicolon, and period depends in every case upon the author using them.

Legislative utterances in Iowa previous to 1868 were not especially burdened with preambles, but those of the following twenty-five years reveal the legislature's fondness for such an expedient. Indeed, preambles accompany from fifteen to thirty per cent of the laws of some sessions and nearly one-half of the acts of the extra session held in 1897. That they have been gradually abandoned is proved by the fact that they attempt to explain the reasons for only four out of three hundred and nineteen general acts passed in 1913 and but four special appropriations out of twenty-four. Of nineteen special laws, however, sixteen had preambles, most of them assigning grounds for the issuance of patents to persons whose real estate titles were under a cloud; and all but one of thirty-three legalizing acts were similarly introduced by preambles. It is clear, therefore, that Iowa

legislators still deem it desirable to use preambles in practically all except general laws.

If the tendency has been to simplify and shorten the most important enactments by the elimination of these authors' prefaces, there is no good reason why they should be employed at all. As arguments or apologies they serve some purpose while bills are running the gauntlet of readings and votings in the legislature and, later, are undergoing the scrutiny of the Governor; but after that they may be said to have outlived their usefulness inasmuch as the language and the purpose of any statute can be rendered sufficiently clear without them. One takes it for granted that when a bill is passed the legislators are actuated by the highest motives, that they feel a genuine necessity to act. If people thought otherwise, why should they not demand preambles for hundreds of the really important laws? The reasons which pad so many preambles, and thus "stuff up and disgrace" the statute-books, are clearly what one critic long ago described them to be: "those effusions of legislative babbling — those old-womanish aphorisms, mocking the discernment of the people, degrading the dignity of the legislature".⁶¹

IV

CONTENT FEATURES OF IOWA STATUTES

IN the foregoing pages certain formal features of legislative acts were described and discussed. They are to the contents of a law what the head is to the human body: no statute can have life without the sort of title and enacting clause defined by the State Constitution or without some kind of body endowed with power and capable of action. Coming now to the provisions embodied in statutes, it will be necessary to consider, not the ingredients or matters composing them, but the framework which visualizes them. By a process of dissection one may discover the skeletal features characteristic of ordinary Iowa statutes. (For a discussion of the content features of statutes see also Mr. Patton's paper on the *Methods of Statute Law-making in Iowa* in this volume, pp. 199-203.)

SUBDIVISION OF STATUTES

The first thing that arrests the attention of the observer is the fact that the contents of an act of the legislature are grouped into one or more parts. Broken into sections, early laws appear upon the printed page after such abbreviations as, "SEC. 1", "SEC. 2", or simply "§2". Recent statutes are cut up into "SECTION 1", "SECTION 2", and so forth. By means of these designations different provisions of an act can be simply and clearly referred to by number: "without them, mistake and uncertainty may, to any amount, be produced."⁶² Each section serves as a topic for separate debate and dis-

cussion in the legislature, and before that as a handy depository into which the author packs a well reasoned proposition.

Where the contents of an important piece of legislation cover a large field the statute is sometimes subjected to an additional system of subdivision: at several points general headings are inserted as reference aids or earmarks of the groups of sections which they cover. The first Iowa act for the organization, discipline, and government of the militia is divided into eight "titles", each being limited to a particular phase of local preparedness, each consisting of its own consecutively numbered sections, and some of them being subdivided into "articles" with sub-headings.⁶³

Another good example of the logical arrangement of sections is the act defining crimes and fixing punishments—the first code of criminal law in Iowa:⁶⁴ one hundred and nine sections are grouped under the names of various offences which, in turn, appear under ten headings such as the following:

FIRST DIVISION.

Offences against the persons of individuals.

MURDER.

The law which established the justice of the peace court shows an original method of subdivision:⁶⁵ it consists of thirteen "articles", each with an italicised sub-heading, and sections independently numbered. The kind of frame-work illustrated by these lengthy acts is commendable because it renders the law more intelligible: it is preferable to the recent Workmen's Compensation Act the complexity of which is relieved only by the insertion of "Part II" and "Part III" without legends.

ENUMERATION OF SECTION PARAGRAPHS

The visualization of statutes is further enhanced by the convenient subdivision of sections into consecutively numbered paragraphs or clauses. For example, the fifth section of the first interpretation statute⁶⁶ enacted by the legislature in Iowa consists of seventeen distinct rules to be followed in construing the acts of the legislature. Many laws employ this useful device, some numbering, and others lettering⁶⁷ the subdivisions. Sometimes the subject-matter of a section is placed under italicised headings, as in the case of the Pure Foods Act of 1915: the first section tabulates in separate numerical order the various standards established for *Flavoring Extracts, Vinegar, Butter, Oysters, and Ice Cream*.⁶⁸

Although it is customary to form paragraphs of the section subdivisions, one occasionally finds laws arranged like the following early enactment on divorce:

That divorces from the bonds of matrimony shall be adjudged and decreed for the following causes, to wit: 1. Impotency. 2. Adultery. And divorces *a mensa et thoro* shall be adjudged and decreed for the following causes, to wit: 3. Extreme cruelty. 4. Wilful desertion of either party for one year: *Provided*, however, That divorce from the bonds of matrimony may be decreed for these latter causes at the discretion of the court.

Furthermore, a section is now and then split up into paragraphs without designations⁶⁹ of any kind so that the law does not appear so bulky. In all cases where sections are displayed in parts, whether numbered or unnumbered, a very useful purpose is served, namely, easy reference by future legislatures. For example, section two of a statute simply avoids repetition as follows:

The provisions of paragraphs three and four of section one

of this act, shall be applicable to the passage of any act that may be passed. . . .

The statutes which are most pleasing to the eye are the ones composed of short sections or of long sections divided into short numbered clauses. Such devices, moreover, promote clearness and simplicity in the law on a subject usually regarded as technical. Thus, in the act to allow and regulate "the action of right", each of fifty-six sections averages three or four lines in length; but the forty-two page statute relating to wills, executors, administrators, and the settlement of estates contains many sections of single sentences of a half or a full page in length. The same thing can be said of the Australian Ballot Act.⁷⁰ Such complex sentences seem to be purposely avoided in numerous other laws. To be sure, certain kinds of statutes lend themselves more easily to conciseness of expression than others. For instance, those which prescribed the powers of a corporation or the duties of an officer, or, indeed, the provisions of administrative laws in general naturally fell into the tabulated style of arrangement.⁷¹ The act establishing legal weights and measures would not look so formidable if many of its sections had been displayed in the same way as several sections of the Workmen's Compensation Act.⁷²

The reasons assigned for dividing a statute into short sections apply with just as much force to the breaking up of the section into its natural parts whenever possible:

1. The person preparing the statute will compel himself to detach and lay out clearly his ideas and finish up one thing at a time.
2. The sense of the statute will be more easily grasped if it is made easy to proceed step by step than if it is seemingly or actually made necessary to assimilate much matter at once.
3. Parts of the statute will be more easily referred to and designated

in discussion. 4. The statute can be more easily amended in parts which may need amendment without disturbing other parts or reprinting long paragraphs.⁷³

LOGICAL ARRANGEMENT OF SUBDIVISIONS

In the light of these suggestions can it be said that the sections of Iowa laws are usually arranged to follow one another in orderly and logical fashion? Are normal and general provisions placed at the beginning and special, exceptional, and local provisions put at the end?⁷⁴ Many acts present their chief principles in the forefront, disentangled from subordinate proposals; while others reveal no system at all. An example of the former is the early Criminal Practice Act, in which over one hundred short sections appear under the following logically arranged headings: *Proceedings to prevent the Commission of Offences; Preliminary proceedings when offences have been committed; Of the Grand Jury; Of Indictments, and Proceedings thereon; Of the trial, and its incidents; Miscellaneous Provisions; and Forms to be used in criminal proceedings.*

The Negotiable Instruments Act also is a model on the printed page:⁷⁵ step by step its one hundred and ninety-eight brief sections cover the ground of a big subject with remarkable precision. In comparison with it the law creating the State Board of Control is a jumble of detail: so many different points are heaped up in the same section and the arrangement of sections is so confusing that one can not help but feel that the act was thrown together in a haphazard, hit-and-miss manner. Numerous other examples of this sort of legislation might be cited if space did not forbid. Much better is the act outlining regulations for the operation of motor vehicles upon the public

highways.⁷⁶ Most easily understood are those simply constructed sections which deal with one subject throughout; but where many different subjects are brought together in one section, long rambling sentences and lack of clearness inevitably result. Most satisfactory to the reader are those statutes whose authors, realizing perhaps that law-writing is at best a sort of black art, make conscientious use of simple devices of visualization.

FREQUENCY OF AMENDATORY STATUTES

Every volume of the session laws of Iowa supplies plentiful evidence of amendatory legislation, but recent enactments prove beyond a doubt that modern legislatures find their chief work in re-shaping the law rather than in passing laws dealing with new subject-matter. Take, for example, the output of general acts at the last two sessions of the General Assembly of Iowa: of the three hundred and nineteen general acts passed in 1913 two hundred and eleven were modifications of laws already on the statute book, and of these, one hundred and fifty-three were amending acts; and of the two hundred and fifty-six general acts passed in 1915 one hundred and ninety dealt with subjects covered by old statutes, one hundred and fifty-one being amendments.

No further evidence should be required to prove that the law on the statute books is now in a state of fluidity and that finality and certainty of expression are attributes of perfection in law-making. Indeed, since changing times and circumstances call for a little different application or perhaps for better enforcement of law, no legislature can expect its acts to be free from future tinkering. In England, where the acts of Parliament are not periodically reduced to a single volume, such as the Code

of Iowa, parliamentary writers complain of "the chaotic and fragmentary condition of our statute law, which makes an amending act a new and ugly patch on a complicated piece of patchwork." Hence, legislation in England on a particular subject is less easily discovered than in Iowa. It is interesting, nevertheless, to discuss the ways of securing amendments and the effects produced by them in this State.

METHODS OF EFFECTING AMENDMENTS

There was at one time a peculiar method of making amendments. The statute which sought to effect a change in prior legislation indicated the fact in its title thus:

An Act to amend An Act to incorporate and establish the city of Dubuque, approved February 24th, 1847.

And the first or last section of such a law made a declaration somewhat as follows:

That all portions of the Act to which this is amendatory, or of any act amendatory thereto, inconsistent with the provisions of this Act, are hereby repealed.

A similar practice is illustrated in recent laws such as the following:

That the law as it appears in an act passed by the thirty-fifth (35th) general assembly and approved on the 20th day of March, 1913, and entitled "A bill for an act additional to chapter five (5) title ten (10) [X] of the code to require locomotives to be equipped with headlights, to prescribe the character of such headlights and to punish the failure to so equip the same." be and the same is hereby amended by inserting after the word "Iowa" found in line two (2) of section one (1) of the enrolled bill of said act the words, " , except lines under twenty (20) miles in length operated wholly within this state,"

An amendment by reference to the title and the date of approval makes it necessary to look up the amended act in a table of contents or an index — “a proceeding which always causes loss of time and annoyance, as it is impossible to know in advance under which one of several possible index-heads the act will be found.”⁷⁷

Amending statutes have, however, been worded in three other ways. The blind form of statement is illustrated by such enactments as the following:

That section two (2) of chapter sixty-eight (68) of the acts of the Thirtieth General Assembly be, and the same is hereby amended by inserting after the word “route” and before the word “answering” in line nineteen thereof the words, “including starting point and terminus”.

That section two thousand and twenty-six (2026) of the supplement to the code be amended by striking from the twelfth line thereof the words “to any state institution”.

That the law as it appears in section twenty one hundred thirteen (2113) of the supplement to the code, 1907, as amended by chapter one hundred and twenty-seven (127) of the acts of the 33rd general assembly, be amended by inserting after the word “board” in line twenty-seven (27) thereof, the following words: “may make an order prescribing such improvements and changes and.”

The form as thus illustrated, so frequently encountered in recent sessional volumes, leaves a reader in the dark as to the exact effect of the amendment unless he turns to the chapter or section of law mentioned and makes the change for himself. Governor B. F. Carroll in 1909 and again two years later appealed to the legislature to discontinue the practice of this form of amendment in favor of a better and more advantageous manner of stating alterations in the law.⁷⁸ The method which he advocated is illustrated by many Iowa laws as follows:

The law as it appears in section sixteen (16) of chapter fourteen (14) of the acts of the thirty-third general assembly, is hereby amended so that the same shall read as follows:

“If any person maliciously, forcibly, or fraudulently, take, decoy or entice away any child under the age of sixteen years with intent to detain, or conceal such child from its parents, guardian, or other person or institution having the lawful custody thereof, he shall be imprisoned in the penitentiary not more than ten (10) years, or be imprisoned in the county jail not more than one (1) year, or be fined not exceeding one thousand dollars (\$1,000.00).

In such an amendment the law is made known, but the change effected can be learned only by comparing the old with the new law. The best amending statute, therefore, is one which makes a statement of the words to be omitted or inserted and the place of insertion, and then reenacts the section with its changes thus:

The ninth sub-division of section two hundred twenty-seven (227) supplement to the code, 1907, is hereby amended by striking out the word “four” as the same appears in the first line of said sub-division, and substituting in lieu thereof the word “five” so that the said sub-division will read as follows:

“Ninth. The county of Polk shall constitute the ninth district, and shall have five judges.”

The advantage gained by such a method of statement is obvious: the reader knows at a glance what changes are made and what the new law is. To be sure, this repetition of whole sections of old law in their amended form causes the expansion of the printed volume, especially if the amended section is already long; but clearness and certainty in such important legislation should not be sacrificed in favor of brevity of expression.

FORM OF AMENDATORY STATUTES

With regard to the form of amendatory statutes the General Assembly in 1898 and again in 1904⁷⁹ laid down several rules for the benefit of its own members in drafting bills: whether an act "amends, modifies or repeals" a law the act should contain exact references by number to the section or chapter and title amended. Moreover, future legislation in the shape of amendments can not leave statutes so uncertain as formerly when one General Assembly not infrequently passed amendments without having discovered that one or more of its predecessors had in some other particular modified the same section.⁸⁰ Under the new system of presenting session laws begun in 1915 there is not so much likelihood of inconsistent, ill-considered, or repeating amendments.

Nor will future amendatory legislation in Iowa, when published, be afflicted with blindness, because the biennial cumulative supplement which began in 1915 presents all amended sections of former laws in their new form. No matter what kind of amending process the General Assembly may choose, the Code Editor will see to it that the effect produced by any amendment appears clearly in the rewritten, printed law. If the legislature indicates the changes to be made in an old statute, the code editor looks up the old law, makes the alterations, and publishes the law as changed: and if the legislature presents a whole section in its new form, the editor's labors are lightened in the sense that the law is ready for publication without any further trouble on his part. In either event, however, no one can know the exact amendments made without reading both the old and the new sections and noting the differences.

FREQUENCY OF REPEALING STATUTES

Attention has been directed to the large number of recent statutes which read in the language of amendment. Almost as striking is the frequency with which repeals are effected. Repealing statutes have gradually become more and more common, some in order to remedy defects by enacting substitutes for the old laws and others to wipe out laws which experience has proved to be unnecessary or unworkable. A glance at the titles in any sessional volume of the past three or four decades quickly reveals the popularity of such statutes. Turning to the general acts passed at the last two sessions, one finds that in 1913 seventy-one (nearly one-fourth) expressly refer to the sections of former laws which are to be repealed, while nineteen others contain general statements to the effect that inconsistent laws are repealed; and in 1915 forty acts (almost one-sixth) repeal specific laws, and nine have "blanket" repealing clauses. These figures do not include statutes which may repeal former legislation by implication.

EXPRESS SPECIFIC REPEALERS

In the exercise of its legislative capacity the General Assembly extends, modifies, varies, or repeals acts passed in the same or previous sessions. Repealers are especially important because if the language used be accurate and specific, the state of the law will be made certain and much unnecessary litigation will be forestalled. Of repeals by express words there are two types: first, those which state exactly the effect of the new upon the old law; and second, statutes which make no specific reference of that sort. The former is the customary method of effecting repeals and may be illustrated as follows:

That section 1, chapter 92, Laws of the 17th General Assembly be and is hereby repealed.

That section three hundred and three-a (303-a) of the supplement to the code, 1907, be and the same is hereby repealed and the following enacted in lieu thereof. . . .

That sections 4048, 4049, 4050, and 4051 of the Code, Chapter 69, of the public laws of the fifteenth general assembly, and chapter 122, of the laws of the sixteenth general assembly be repealed.

Frequently, when new legislation is enacted concerning a subject previously legislated upon, each of its sections, if substituted for an existing one, also refers to the portion of old law repealed.⁸¹ Such statements are much more satisfactory than designations in the early sessional volumes such as the following:

That "An act to amend an act, entitled an act concerning the supreme and district courts, and defining their jurisdiction and powers," approved January 19th, 1838, . . . be and the same is hereby repealed.

This reference to the title and date of passage is bad because it compels one to go to the inconvenience of consulting an index to learn where the repealed law is to be found.⁸²

EXPRESS GENERAL REPEALERS

Repeals effected in the second way are usually to be found in the last section of a statute or just before the clause of taking effect. The following sections are characteristic of general repealers:

All acts or parts of acts in so far as they are in conflict with this act are hereby repealed.

That so much of Act entitled "An Act to establish an Asylum for the Blind," approved January 18th, 1853, as conflicts with the provisions of this Act, is hereby repealed.

All acts or parts of acts in conflict with this act are hereby repealed, in so far as they are in conflict with this act.

All acts or parts of acts in conflict with any of the foregoing sections are hereby repealed.

Sometimes the repealing clause enumerates the sections of prior legislation repealed and adds the "blanket" form illustrated above, as for example:

That sections three thousand twenty-nine-a, three thousand and twenty-nine-b, three thousand twenty-nine-c, and three thousand and twenty-nine-d, supplement to the code, 1913, and other acts or parts of acts in conflict herewith be and the same are hereby repealed.

The insertion of this sort of general or blanket repealer is usually regarded as a most reprehensible practice: it shows that the draftsman of the statute took no time to review the existing law on a subject in which he appears to be interested, and it also imposes upon others the burden of hunting up such laws as happen to be inconsistent. The chaos caused by such a repealer leads to unnecessary litigation because personal rights and obligations are rendered uncertain.⁸³

The blanket repealer, to be sure, "is often resorted to in order to assert, in a general way, an intent to be incisive and to give a sweeping effect to the new measure," but the fact is, as one writer concludes, that its use "is unnecessary and seldom, if ever, justified. Where its use is not customary it is merely a screen behind which the careless draftsman protects himself from the labor of ascertaining the exact effect of the law he makes while at the same time he *seems* to be making it more explicit."⁸⁴ It would be a good rule if no statute were regarded as repealed unless mentioned as repealed—in that event

“the cheerful but too usual” blanket repealer would mean nothing. As things now are, the actual repeal accomplished by such statements, if any, must be finally decided by the courts, “measured by the extent of repugnancy in each case”.⁸⁵

IMPLIED REPEALS

Real difficulties are also created when new law is enacted upon a subject already legislated upon, and the question arises: is the new statute intended as an addition to the old law or must one imply or infer that it abrogates the old law wholly or in part? Here again the courts may be called upon to disentangle the law. For instance, a statute declares the obstruction of a highway a nuisance and a later act empowers the board of supervisors to remove highway obstructions: the new remedy was regarded, not as inconsistent with the old, but as cumulative.⁸⁶ When the terms of two sections of law are manifestly inconsistent, the older is repealed by implication, but in every such case the repugnancy must be very clear, the conflict irreconcilable.⁸⁷ If one statute covers an entire subject and a second comes along to do the same thing, the prior statute is repealed, although there are no express provisions to that effect.⁸⁸

To obviate the large amount of litigation which grows out of just such situations, what a blessing are such sections as the one at the end of the Absent Voters Act:

This act shall be deemed to provide a method of voting in addition to the method now provided by statute, and, to such extent, as amendatory of existing statutes relating to the manner and method of voting.

Or sections which read thus:

The provisions of this act shall be construed as additional to chapter two (2) title ten (X) of the code and supplement, relating to the location, establishment and construction of levees, drains, ditches and water courses and shall not be held to repeal any such provisions.

Nothing in this act shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Had these clauses not been added, there might have been a question as to what the legislature intended: it might then have been contended⁸⁹ either that the new legislation was meant to supplant the old or that it was meant to supplement. The intention can always be made clear by a simple statement, because repeals by implication are not favored in Iowa, the presumption being "that the legislature acts with knowledge of all previous legislation and that if any change were intended it would be expressed."⁹⁰ If more pains are taken with the preparation of some specific explanatory clause, litigation will be prevented. For the same reason no express repealer need leave a single doubt as to the intention of the legislature.⁹¹

FORM OF REPEALERS

Since 1898 the General Assembly has had certain directory regulations for its own guidance in the enactment of amendatory and repealing acts.⁹² Stated as briefly as possible, the chief rule is that a statute repealing any part of the Code, the *Code Supplement of 1913*, and the *Supplemental Supplement* shall in its title and in the body of the act itself refer to the specific number of the section or sections and the chapter and title of law affected. Recent statutes accordingly help to keep the law more simple in form and make more clear to persons who

consult the statute books just what the law is. Repealers which refer to the section and chapter numbers of the compiled law also make it easy to prepare future compilations. The supplement which contains the general laws of the session of 1915 presents a literal copy of every repealer and of every enactment substituted for a repealed section. And yet, although the General Assembly has had such well-defined statutory rules calling for clearness in the statement of repeals, the legislature has not been prevented from effecting blanket and implied repealers which are anything but clear.

TAKING EFFECT OF STATUTES

One of the characteristic content features of a large number of statutes is the last section, or publication clause as it is usually called. Nearly one-fourth of the laws enacted by the General Assembly in 1915 contain provisions fixing the time when the acts shall take effect, and more than half of all appropriation, special, and legalizing acts include similar provisions on account of their emergency nature.

The Legislative Assembly of the Territory declared that unless a statute expressly prescribed a different time the legislature intended it to go into operation on the thirtieth day after it was approved by the Governor.⁹³ Accordingly, the concluding section of early acts very often contained some one of the following statements:

This act to take effect from and after its passage.

This act to take effect and be in force from and after its passage.

This act shall take effect and be in force from and after its passage.

This act to be in force, and take effect, from and after its passage.

This act to be in force from and after the first day of May next.

This act to take effect on the first day of April next.

The first State Constitution⁹⁴ provided that if "the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State." Inasmuch as these words were not specific enough, the legislature added several statutory rules to the effect that acts of a private nature not expressly fixing the time should go into operation on the thirtieth day "next after the day on which they are approved by the governor, or otherwise become law in conformity with the constitution."⁹⁵ And so, in accordance with these and other regulations subsequently made,⁹⁶ most early State statutes end with sections worded as follows:

That the Governor [shall] cause this act to be published immediately in the several newspapers of this city, and that the same shall take effect on the thirtieth day of December, 1846.

This act shall take effect from and after its publication in the weekly newspapers in Iowa City.

This act to be in force after its publication.

This Act shall take effect from and after its publication in the Wapello Intelligencer, a newspaper published at Wapello, Louisa county; *Provided*, no expense shall accrue to the State for said publication.

It will be noted that the phraseology of the section was never uniform. In case the statute made no provision at all about taking effect by publication, an act of a

public nature could not become effective until it appeared in the sessional volume published by State authority.⁹⁷

By the terms of the present State Constitution no law of a public nature passed at a regular session takes effect until the fourth day of July next after its passage; laws of a special session take effect ninety days after the adjournment of the General Assembly by which they are passed; and if the legislature deems a law of immediate importance, provision may be made for its taking effect by publication in newspapers of the State. These rules have been amplified at various times so that at present an act of a private nature in which no date is prescribed becomes effective on the thirtieth day after it becomes law.⁹⁸

Most enactments since 1857 conclude with such sections as the following:

This act shall take effect and be in force from and after its publication according to law.

This act shall take effect and be in force from and after its publication in the Iowa Citizen and Iowa State Journal.

This act shall take effect and be in force from and after its publication in the Dubuque Express and Herald and Dubuque Tribune, without expense to the State.

This act being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register and Sigourney News, anything in the statutes of this State to the contrary notwithstanding: *provided*, said publication be without expense to the State.

Occasionally parts of a law become effective at different times, as when the Workmen's Compensation Act declares:

Part one of this act shall take effect from and after July first, 1914, and parts two and three July fourth, 1913.

A part of the statute of 1915 relative to the registration of motor vehicles went into operation on July 4, 1915, and another part on January 1, 1916. Occasionally a provision is added near the end of the act to make its effect retroactive or retrospective.⁹⁹

Beginning with the laws of 1915 as found in the *Supplemental Supplement* emergency or publication clauses no longer appear printed with the statutes to which they are attached, and if one wishes to know whether a statute goes into effect on any special date, recourse to the last column of the table of titles will indicate the time of publication.¹⁰⁰

FORMS AND SCHEDULES IN STATUTES

In England it was not unusual at one time to append to a statute the forms which were to be observed by officials in the administration of the law.¹⁰¹ Though rare now, this practice is illustrated in the statutes of Territorial Iowa. The act which lays down the law relative to attachments concludes with the form of a writ of attachment and the form of a summons to garnishees; the criminal procedure act sets forth the forms of an affidavit, a warrant, a recognizance, a mittimus, a subpoena, and an indictment; and similarly the various writs of process of a justice of the peace, and the forms of oaths to be administered are prescribed in connection with other statutes.¹⁰² Intended as guides to persons concerned with the enforcement or application of the terms of an act and not necessarily stereotyped because "equivalent forms" were declared to be as good, these forms were not, however, grouped together but were added at the end or were inserted anywhere with or without section numbers. The same thing may be said of schedules. All such matters,

constituting the merest detail, are properly separated from the broad rules of principle upon which alone the attention of the reader should be focused. Minor and subordinate details such as the blank ballots inserted in election laws may well be relegated to the rear, thus helping to clarify the law by keeping essentials in the foreground.

Just where to draw the line of demarcation in some statutes is not always easy, and although no definite rules can be laid down "as to the precise mode in which the subject-matter of a statute should be distributed between the body of an Act and its schedules," it is bad policy to hide away controversial matter in any schedule. The British Interpretation Act of 1889 illustrates very well the use of a schedule in the case of repeals: "The Acts described in The Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule." The listing of enactments repealed thus helps to keep the law simple.¹⁰³ The same thing could have been done in many Iowa laws as, for instance, in the Motor Vehicles Act of 1913: eight new sections were enacted as substitutes for those of 1911, and a schedule indicating the sections repealed would have relieved the law of much unnecessary repetition at the beginning of each section.¹⁰⁴

Other laws in the Iowa statute books may be cited as illustrations of cases where the use of the schedule might have been expedient. A thirteen page act concerning the costs and fees to be charged by various officers is broken up by ten pages itemizing the fees; while an act relative to district courts and judges fixes the days and the months of terms to be held in every county. In each of these laws a schedule at the end might have embodied such

comparatively unimportant provisions. The law for the incorporation of the Burlington and Iowa River Turnpike Company might also have contained a schedule of the rates of toll instead of including them in section five.¹⁰⁵

The body of the Workmen's Compensation Act is burdened with several forms, a compensation schedule, and a computation schedule: all these might well have appeared separately numbered at the end of the statute and thus have rendered the whole law less complicated and easier to understand. Section eight of the law for the inspection of weights and measures occupies nearly two pages in fixing the weight of a bushel for various commodities named: a schedule would have served better and made the body of the law more compact. For the enlightenment of the State Food and Dairy Commissioner the General Assembly established food standards¹⁰⁶ which, if presented in the columns of a schedule, would have brought the principles of the act closer together and at the same time have proved more useful to the officer who must consult them.

Although schedules have not been used as appendixes to Iowa statutes as often as they might have been, they have not been wholly neglected. Appropriation acts have frequently contained schedules showing the amounts into which and the different purposes for which lump appropriations to State institutions should be divided and paid. Two of the best examples of schedules are to be found in the Railroad Rate Act of 1874: a list of tariff rates for freight covers fourteen pages, and articles to be carried as freight are classified in ten pages more. These schedules appear in two sections of the act and are thus mixed up with the policy of the law whereas they

should properly be put in the background.¹⁰⁷ Many statutes which are overloaded with administrative details — and most enactments of the legislature, by the way, constitute administrative law, that is, law which creates agencies of government and defines their powers and duties — might well have been drafted along lines indicated above: main principles, big features displayed first, and minor details packed away in a simple schedule at the end.

V

THE LANGUAGE OF IOWA STATUTES

OF all the criticisms leveled at the labors of legislatures in the United States the one most commonly heard concerns the language of statutes, a subject which, indeed, has long afforded food for reflection in every English-speaking country. At the meetings of bar associations speakers in their perennial attacks refer to laws characterized by a looseness and ambiguity of expression that leads to endless uncertainty and litigation. Others are less harsh in declaring that on the whole, considering the amount of legislation enacted it is remarkable how well the work has been done; but as a general rule statutes are criticised as a mass of verbiage — repetitions, contradictions, and ambiguities — by no means perfect in orthography, grammar, rhetoric, or punctuation. Although such observations with regard to the phraseology of legislative utterances are as old as legislation itself, they have been emphasized only since the early years of the nineteenth century.

BENTHAM'S CRITICISMS

Jeremy Bentham directed attention to the fact that ancient Greek lawgivers invited poetry to aid them in writing law and never "thought of addressing the people in the barbarous language that disgraces our statute-book, where the will of the legislator is drowned in a sea of words." By way of comparison he ridiculed the English lawmakers who, "habited in a Gothic accoutrement

of antiquated phrases, useless repetitions, incomplete specifications, entangled and never-ending sentences . . . merely, from incomprehensibility, inspire terror, but cannot command respect." He declared that it was a matter of astonishment "why the arbiters of our life and of our property, instead of disporting themselves in this grotesque and abject garb, cannot express themselves with clearness, with dignity, and with precision: the best laws would be disfigured if clothed in such language."¹⁰⁸ These words of one hundred years ago are no less applicable to the statutes of Iowa and of other American States to-day.

IDEAL QUALITIES OF LEGAL LANGUAGE

The language of Iowa statutes owes its character to two factors: the organs or persons from whom the laws proceed and the methods of composition employed by them. Now, James Bryce briefly indicates what qualities legal language should possess:

In point of Form, the merit of Law consists in brevity, simplicity, intelligibility, and certainty, so that its provisions may be quickly found, easily comprehended, and promptly applied.¹⁰⁹

That such an ideal of perfection can be striven after but never quite achieved by a democracy seems to be the inference of another writer when he asserts:

So many conflicting energies go to the making of a statute that it is not surprising to find incompleteness of expression, inconsistencies of wording, and even uncertainty of meaning and intention.¹¹⁰

A perusal of the session laws of Iowa reveals the manner in which they have been penned, and so, in the following pages it is proposed to examine Iowa statutes in the light of Bryce's suggestions as to the nature of the language which statutes ought to possess.

UNNECESSARY WORDS: PROLIXITY

Iowa statutes have suffered much from the curse of prolixity or redundancy: so many words are inserted unnecessarily that brevity as an ideal seems to be lost sight of. Needless repetitions or the multiplication of words in the statement of what must be stated are by no means uncommon. Pruning out these repetitions and condensing the expression generally would certainly result in shorter and more intelligible enactments.¹¹¹

Brevity and better style may be secured by dropping the word "that" from the beginning of all sections, first as well as last, because this introductory connective is unnecessary to the legal sufficiency of a statute. Iowa legislative practice in the use of the word has not been uniform: sometimes "that" appears only in the first section, sometimes in many, at other times in all, and again in none. Moreover, prepositions and phrases are frequently used in pairs as in the statutory provision that an act "shall be in full force and effect from and after its passage and publication", where the simple expression, "shall be in force after its publication", is quite sufficient. The expression "all acts and parts of acts" also is needlessly prolix. Again, in place of "shall" or "may" many statutes contain such ponderous equivalents as:¹¹² "It shall be the duty of the board of parole, . . . and they are hereby authorized and directed", "Said judge shall have power and it shall be his duty", and "he shall have the right". The very common expression, "It shall be unlawful", is an indirect and less forceful way of saying: "No person shall", as for instance in the following statute:

It shall be unlawful for any person under the age of twenty-one years to smoke or use a cigarette or cigarettes on the premises

of another, or on any public road, street, alley or park or other lands used for public purposes or in any public place of business or amusement, except when in company of his parent or guardian.¹¹³

Such combinations as "each and every", "all and every", "any and all", "parts and portions", "full and complete", "lot or piece", and others were formerly more common than now; but in no case do they make the thought either more exact or more elegant, and they indicate in modern times a slavish obedience to precedent and legislative tradition. Brevity and simplicity and good style might have been further cultivated by Iowa draftsmen if they had avoided the use of such clumsy and archaic words as "said", "aforesaid", "such", and "the same": no words in the English language have been so terribly abused in law-writing. The amusing fact is that these hoary phrases are scarcely ever essential or necessary and other words may well be substituted where they are called for, with the result that statutory expression will no longer be reduced "to the level of the commonplace products of legal drudgery." Similarly, the word "any" is not naturally used in all connections, and when it is followed by "whatsoever" and "wheresoever", a simple statutory provision receives a pretentiousness of expression not warranted by the subject-matter.¹¹⁴

The auxiliary "shall" may well be omitted in all dependent clauses as in the following:

Any person who shall drink intoxicating liquors as a beverage on any passenger railway car or street car in service or who shall use profane or indecent language on such railway or street car shall be guilty of a misdemeanor.¹¹⁵

This proposition is more naturally stated and less

artificial if "shall" is deemed superfluous in the first two places. The future tense should give way to the present tense, and the future perfect to the perfect in all such dependent clauses.

STATUTE AS TO NUMBER AND GENDER OF WORDS

One of the miscellaneous provisions of the code of criminal procedure enacted in 1839 curiously related to the language of statutes reads as follows:

In all legislative acts and proceedings in this Territory, words indicative of the masculine gender shall be deemed to include the feminine, and the singular number shall be deemed to include the plural, wherever the circumstances of the case will admit. Thus, where, in any legislative provision, the word "person" is used, the law shall be equally applicable to cases where several persons are concerned, and the words "he" or "him" being used, the law shall apply to cases where a female, or several persons together, have been concerned.¹¹⁶

Although this rule has remained substantially unaltered for the guidance of judges, lawyers, and legislative draftsmen, any number of statutes might be cited to show that laws have been prepared in complete ignorance of the rule. A few illustrations like the following will suffice:

That the right of any person or persons to pass through this Territory with his, her, or their negroes or mulattoes, servant or servants, when emigrating or travelling to any other State, or Territory, or country, or on a visit, is hereby declared and secured.

Every person, being a householder, who shall take up any stray horse, gelding, mare, colt, mule, or ass, shall make oath that the same was taken up at his or her plantation, or place of residence and that the marks,

or brands, have not been altered by him, or her, or any other person, or persons, to his, or her knowledge. . . .

That no person shall take or needlessly destroy or attempt to take or destroy the nest or the eggs of any wild birds, or have such nest in his or her possession, except as permitted by this act.

That all conveyances of real estate executed prior to January 1st, 1900, wherein the grantor or grantors described herself, himself or themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law of some person deceased in whom the record title or ownership of said real estate previously vested, shall be

Despite the general rule that words "importing the singular number may be extended to several persons or things, and words importing the plural number may be applied to one person or thing", statutes contain much unnecessary repetition as shown in the above and many other cases. They could have been considerably condensed by the use of the singular alone. The same thing may be said about the use of feminine and masculine pronouns. The masculine gender is, in the contemplation of the courts, the comprehensive gender, although it may be necessary occasionally to specify that women are within the purview of an act.¹¹⁷

USE OF SYNONYMS

The drafters of statutes have always indulged in the use of synonyms for fear that a single word would not cover all possible contingencies. This practice, as well as the constant repetition of the same series of words, has conduced to the formation of rambling sentences and sections. Specific terms are employed, even when the statute is intended to be general and sweeping in its

character, because the courts might otherwise be persuaded to let certain persons go unpunished. An example of this is seen in the following:

Any person who, as owner, manager, director, or agent, or in any other capacity, prepares, advertises, gives, presents, or participates in any obscene, indecent, immoral, or impure drama, play, exhibition, show, or entertainment, which would tend to the corruption of the morals of youth or others, and every person aiding or abetting such act and every owner or lessee or manager of any garden, building, room, place, or structure, who leases or lets the same or permits the same to be used for the purposes of any such drama, play, exhibition, show, or entertainment, or who assents to the use of the same for any such purpose, if it be so used, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.

In this act appear at least three series of nouns, two series of verbs, and one series of adjectives, when it seems to be the simple intention of the statute that no one shall participate in the presentation of a performance which tends to corrupt morals and that no one shall lease or permit premises to be used for such a purpose.

Repetition or redundancy is the bane of so many legislative utterances that it takes but a few lines of a long sentence in a single enactment to render the reader dizzy. The following illustrations show attempts to describe to the minutest detail the specific points in the contemplation of the draftsman:

Any person who in any manner, for exhibition, or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any flag, standard, color or ensign of the United States or state flag of

this state, or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article, or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days; and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by and in the name of any citizen of this state, and such penalty when collected, less the reasonable cost and expense of action or suit and recovery, to be certified by the clerk of the district court of the county in which the offense is committed, shall be paid into the county treasury for the benefit of the school fund, and two or more penalties may be sued for and recovered in the same action or suit. The words, "flag, standard, color or ensign," as used in this section, shall include any flag, standard, color, ensign, or any picture or representation of either thereof, made of any substance or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign, of the United States of America, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars,

and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America.

Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of Iowa, and engaged in the production, manufacture, sale or distribution of any commodity of commerce, that shall for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminate between different sections localities, communities, cities or towns of this state, by selling such commodity at a lower price or rate in one section, locality, community, city or town than such commodity is sold for by said person, firm, association, company, or corporation, in another section, locality, community, city or town after making due allowance for the difference if any, in the grade or quality, and in the actual cost of transportation from the point of production or purchase, if a raw product, or from the point of manufacture, if a manufactured product, to a place of sale, storage or distribution, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community, city or town shall not be in violation of this act.

Statutes are very often burdened with the series, "person, partnership, company, association, or corporation". When the law is applicable to different persons or classes, the frequent repetition of a series of words may be avoided by letting one word stand for several and indicating this fact at the beginning or end of the statute, as is done in the act providing for the destruction of "noxious weeds". Instead of repeating over and over the names of particular weeds, one section of the law specifies the kinds affected by all other sections.¹¹⁸ In the act for the protection of game, certain game animals

are specified in the second section and subsequent sections save space by simply referring to "the birds or animals named in section two." In another statute the word "commissioner" consistently appears throughout in place of "State Food and Dairy Commissioner".

DEFINITION OR INTERPRETATION CLAUSES

These ways of shortening statutes naturally suggest a consideration of definition or interpretation clauses in Iowa laws. Not infrequently one or more sections of a statute are devoted to the definition of words or phrases used throughout the act, the purpose being to assist the courts in deciding cases which may involve the language of the statute. Indeed, one of the first things done by the legislators of the Territory of Iowa as they launched forth upon their law-making career was to pass "An Act concerning the Construction of Statutes". This act, slightly modified since the year 1839, is law in Iowa to-day and its provisions are noteworthy as being applicable to all legislation which may come up for interpretation by the courts.

Unless they are inconsistent with the manifest intent of the legislature or repugnant to the context, the words and phrases of a statute are to be construed "according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning". These general rules are supplemented by the definitions of specific words such as grantor, grantee, highway, road, inhabitant, insane person, issue, land, real estate, real property, personal property, property, month, year, oath, person, seal, State, town, will, written, in writing, sheriff,

deed, bond, indenture, undertaking, executor, administrator, clerk, clerk's office, and population. It is also laid down that degrees of "consanguinity and affinity shall be computed according to the civil law of Rome." These rules are an attempt to state once for all the meaning of common terms and phrases that were expected to recur in statutes many times in the years to come: accordingly they are meant to forestall repeated explanations of the same words.¹¹⁹

The Iowa interpretation statute preceded a similar one in England by ten years, but it was no doubt drafted upon the model of a similar law of some other American State.¹²⁰ Jeremy Bentham had for some time been preaching "the utility of definitions for avoiding, or reducing, the amount of prolixity, repetitions, and tautology in the language . . . and also as a means of guarding against the danger of using different words to express the same thing in different parts of an Act." He urged that a suitable definition be found "of a phrase or combination of words which will be of frequent recurrence in your law, and stick to that definition. By so doing you will avoid cumbrous repetitions and secure uniformity of language." Bentham's suggestions, however, led to "an undue, excessive, and unreasonable" making of definitions in very many acts.¹²¹ The drafters of the Iowa interpretation act proposed to prevent any such evil by packing into one law a few definitions with uniform application to every statute in which the words defined might be found.

Whether the draftsmen of the hundreds of statutes enacted in Iowa since 1839 made use of the definitions so established can not be stated with certainty, but the meanings of some of the words then defined were later

broadened. Furthermore, it must not be thought that the original statute cut off all definitions in future acts — on the contrary numerous words used in statutes have undergone defining in order to make their meaning clear. Definition sections have always been a favorite device to render the meaning of acts certain — indeed, because they are aids to interpretation, the older and better name for them is “interpretation sections”. Usually they appear where they are absolutely necessary, and are properly so employed “to include or exclude something with respect to the inclusion or exclusion of which there is a doubt without such a definition”.¹²²

A few attempts to make the law clear by means of such expedients may well be indicated here. The statute levying a tax upon peddlers declares:

The word “peddlers” under the provisions of this act, and wherever found in the code, shall be held to include and apply to all transient merchants and itinerant vendors selling by sample or by taking orders, whether for immediate or for future delivery. The provisions of this act shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling and distributing fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employes.

A statute to prevent the unlawful sale of liquor by “bootlegging” aims to make its meaning clear in the following provision:

Any person who shall, by himself, or his employe, servant or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or leave in a place for another to secure, any intoxicating liquor as herein defined, with intent to sell or dispose of the same by gift or otherwise, or

who shall within this state, in any manner, directly or indirectly, solicit, take, or accept any order for the sale, shipment, or delivery of intoxicating liquor, in violation of law, shall be termed a bootlegger, and shall be guilty of a misdemeanor.

The act for the protection of wild birds other than game birds defines the latter thus:

The Anatidae, commonly known as swans, geese, brant and river and sea ducks; the Rallidae, commonly known as rails, coots, mud-hens and gallinules; the Limicolae, commonly known as shore birds, plovers, surf birds, snipe, wood-cock, sandpipers, tattlers, and curlews; the Gallinae, commonly known as wild turkeys, grouse, prairie chickens, pheasants, partridges, and quails.¹²³

A section of the act taxing express companies construes the word "company" to mean and include "any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, any express route as herein defined, whether formed or organized under the laws of this state, any other state or territory, or any foreign country." Other acts define "merchant" and "manufacturer" for both particular and general purposes. The detailed law providing for the registration of motor vehicles devotes a long section to defining motor vehicle, local authorities, chauffeur, owner, public highways, motor drays, motor trucks, and motor delivery wagons. Long, complex statutes of recent years, like the Negotiable Instruments Act, the Workmen's Compensation Act, the Bills of Lading Act, the Warehouse Receipts Act, the Collateral Inheritance Tax Act, the Blue Sky Law, the Pure Food Acts of 1911 and 1915, the Physician's Unprofessional Conduct Act, the Cold Storage and Refrigerating Warehouses Act, the Hotels Act of 1909, the Commission Plan of City Govern-

ment Act, and the Pure Drugs Act contain many definitions. Down to the present writing the statute laws of Iowa have defined between two and three hundred words.¹²⁴ (See Mr. Patton's paper on the *Interpretation and Construction of Statutes in Iowa* in this volume.)

REPETITION OF DEFINITIONS

Some statutes begin with an explanation of terms in the first section, which is certainly the logical and proper place to prepare the reader to understand the phraseology which he is to read. Many more laws set forth definitions near the end, an order which compels the reader sometimes to narrow or to widen his conception of the force of the act. Other statutes are known to define terms immediately after they are used for the first time in the context. It is to be observed also that such words as acceptance, action, association, bill, coin, commissioner, company, corporation, delivery, food, goods, holder, in good faith, issue, misbranded, order, owner, person, purchaser, and railroad have been defined several times in different connections. For instance, the definition of the word "value" is the same in three Iowa statutes: "Value is any consideration sufficient to support a simple contract"; and it is further explained in as many statutes that a negotiable instrument or receipt or bill of lading taken for an antecedent or preëxisting debt is "for value".

To prevent such repetitions in England the Interpretation Act of 1889 "generalized definitions which had been of frequent occurrence and made them apply uniformly to all subsequent legislation, if there were no expressed contrary intent."¹²⁵ Statutes were thereby shortened and rendered more intelligible because English

draftsmen regarded the definitions laid down by the act as of mandatory force. The same sort of law in Iowa is very much shorter and seems to have served as a guide to the courts rather than to the drafters of bills, as scores of annotations in the Code testify. When the drafting of laws in Iowa becomes centered in a special department, a single statute providing for the uniformity of meaning of terms wherever employed will be of great practical convenience. A sort of legislative dictionary, it will shorten the language of enactments, "provide as far as possible for uniformity of expression by giving *prima facie* definitions of several terms in common use", and state explicitly certain convenient rules of construction.¹²⁶

LEGISLATION BY REFERENCE

Sometimes statutes are considerably shortened by incorporating the provisions of laws already upon the statute book merely by references to them, as where one act provides that salaries and expenses "shall be paid out of said appropriation and in the manner provided by sections 170-d, 170-e, and 170-f of the supplement to the code, 1907". Another law declares that a proposition "shall be submitted in the manner provided . . . in the chapter on elections". Another law assessing a tax of \$300 annually upon the sale of cigarettes reads:

Such tax . . . shall be assessed, collected, and distributed in the same manner as the mulct liquor tax.

Sections 734-741, 751-774, and 777-791 of the Code were by law "made applicable to cities acting under special charter". Such statutes sacrifice a certain amount of clearness, but where the terms of an old law are given a new application and the fact is indicated in the Code by an editorial footnote appended to the old section the law

is perhaps made sufficiently clear for practical purposes.¹²⁷ At the same time, this method of shortening enactments, known as legislation by reference, is dangerous, because if the old law should some day be repealed or amended, any law incorporating its provisions would necessarily be affected by the change, and thus the result might be botchwork of the worst description.

USE OF TECHNICAL PHRASEOLOGY

Brevity, accomplished in the ways suggested above, necessarily conduces also to simplicity, to intelligibility, and to certainty in statutes. Indeed, all these qualities are closely related: they are in reality inseparable because all depend upon the kind of language employed in the writing of laws. Something should, however, be said about the absence of simplicity in a large proportion of the session laws of Iowa. To make the laws simple in expression is not an easy matter, as any draftsman can bear witness. Language must be precise and accurate, to be sure, but Latin words and technical phraseology are not needed to accomplish such an end. The word best adapted in ordinary composition is generally the best that can be used in writing law — to quote from a great authority:

Law is made for man, and not man for law; and it is too often forgotten by lawyers and draftsmen that the greater number of Acts . . . contain rules of conduct to be observed by illiterate persons, and to be enforced by authorities unacquainted with the technical language of Coke and the year books.

If other than simple words are needed, "the compromise between popular and technical language may be effected by means of a definition", as has already been illustrated above, and in this way words in ordinary use are often explained, extended, or limited.¹²⁸

Although some of the statute laws enacted during the first year of the Territory of Iowa may be criticised on account of their defective arrangement and poor English, chiefly due no doubt to the fact that they were hastily put together, as a whole they "are clothed in such simple and clear language that the man who is unacquainted with the law can easily understand them." Nevertheless, the legislative enactments which accumulated within a few years were described as "deranged, dispersed, and technical — in a word so incomprehensible as sometimes to deceive even lawyers themselves."

As a result of the demand for relief from legal obscurities, ambiguities, and conflicts, the *Code of 1851* came into being: Iowa statute law was stripped of verbiage and useless parts and was re-stated "in plain, direct, and intelligible English." Again, the Civil Practice Act of 1860 was written chiefly for the unprofessional reader; and the compilers of the *Code of 1873* took existing statute law and for the sake of precision, clearness, and brevity avoided repetitions, removed all foreign words and phrases such as *ex officio*, *bona fide*, and *prima facie*, and substituted for them their non-technical English equivalents.¹²⁹

Such Latinisms as *scire facias*, *capias*, *mittimus*, *habeas corpus*, *certiorari*, *mandamus*, and others are frequently met with, but they are used for persons who are presumably informed as to their meaning. Words descriptive of the practice of courts of law are also difficult of comprehension to the ordinary reader, but technical meaning may be said to inhere in legal language of that sort. Similarly, one may expect to find such technical words as "working face", "haulage ways", "break-through", and "stoppings" in a statute relating to

mines, while it is not surprising to read that oil of turpentine may be sold in Iowa if it "is wholly the volatile portion obtained by distillation of the oleo-resinous exudation from various species of coniferous trees." Terms of art and science are expected in legislation dealing with such matters, but in the vast majority of cases legislation passed by laymen, administered by laymen, and operating on laymen "should be expressed in language intelligible by the lay folk".¹³⁰ Technical phraseology is hardly ever necessary for the purposes of the legislative draftsman.

UNINTELLIGIBLE LANGUAGE

Laws are drawn up in an intelligible manner by the use of common non-technical language, but how frequently the reader of Iowa statutes can concur in the remarks of an English statesman when he exclaimed in Parliament: "Really, sir, all these various repetitions, recapitulations, and references are so tedious and so perplexing, that I, for one, almost invariably find myself completely puzzled before I get to the end of a single clause." Full and redundant expression simply results in confusion worse confounded: "we do not arrive at great perspicuity by going beyond a certain limit; and this limit is, where plain common sense must begin to interpret." Matters are aggravated even more when legislation is marred by intentional obscurities, perplexities, or imperfections. A clear statement, therefore, divorced from the ordinary complicated phraseology, makes the law easier to obey and easier to enforce.¹³¹

FREQUENCY OF PROVISOS

To the superficial observer no one thing stands out more prominently in the session laws of Iowa than the

clauses which begin with the time-honored and time-worn word, "Provided". This word appears not only once or occasionally but time and again even in the same statute: sometimes as many as eight provisos cluster in a single section.¹³² What makes the word conspicuous is the fact that it is usually italicised or else it is capitalized immediately after a colon. Moreover, instead of the single word one frequently finds such variations as "*And provided*", "*And provided also*", "*And further provided*", "*Provided, however*", and "*Provided always*". Invariably, however, the reader is introduced to a complex sentence at the conclusion, perhaps, of an already overloaded section. Nothing contributes more to stretch out the contents of a law than the use of these provisos for which the legislature has entertained such remarkable affection: nothing contributes more to make the law unintelligible.

Some draftsmen of statutes seem to have the notion "that legislative language must be intricate and barbarous",¹³³ and that a statute without provisos lacks something very essential to law-writing; and so they have interpolated these disfiguring "provided" clauses to the great confusion of the law. The astounding fact is that the ancient practice thus indulged in by legislators of modern times is quite unnecessary. The use of "*Provided*" makes enactments stilted and pompous very often when the substitution of the word "but" or "and" will produce the thought in plain English. This might be illustrated by numerous sections too lengthy to be repeated here, but a short example of the sort of proviso commonly engrafted on or injected into an enactment will suffice:

Such corporation may receive donations of land, or other property, for the use of said society: *Provided*, That no such cor-

poration shall hold any greater amount of real estate than the value of one thousand dollars, for any greater length of time than six months.

This section may be rendered in more approved form as follows:

An incorporated agricultural society may accept for its own use donations of land or other property, but shall not hold for more than six months real estate valued at more than one thousand dollars.

USE OF EXCEPTIONS

At the end of the third section of an act which declares the legal rate of interest for various kinds of contracts, a statement is added, calling attention to certain other matters as follows:

. . . . *Provided*, nevertheless, That nothing in this act shall extend to the letting of cattle, or other usages of like nature practiced among farmers, or to maritime contracts, bottomry, or other use of exchange, as hath heretofore been customary.¹³⁴

This proviso might better have formed a separate section without the first three words. Properly speaking, however, it constitutes an exception, and illustrates a certain distinction: a proviso takes special cases out of a preceding enactment and makes provision as to them, whereas an exception excludes particular cases from the operation of the statute and provides no special rules for them. The two words, however, are usually regarded as synonymous.¹³⁵

Sometimes the usual "*Provided*" breaks into the thought of an act and the reader is led to think that all which follows belongs to the proviso, only to discover upon close examination that the proviso ends somewhere with a comma, and that the main body of the act rambles

on, to be followed perhaps by another proviso at the end of the section. If a proviso is used at all, it should end with a period and to that extent at least respect the reader's patience.¹³⁶

SAVING CLAUSES

Statutes sometimes contain a third kind of "proviso" as illustrated in the following:

That so much of the above named act as authorizes the election of three justices of the peace in the city of Keosauqua, be and the same are hereby repealed: *Provided*, That those persons now acting as justices of the peace in said township and city of Keosauqua shall not be affected hereby.

The proviso here is really a saving clause, a provision exempting certain persons from the operation of the act. Such clauses are not at all uncommon in repealing statutes and are deservedly relegated to separate sections near the end of statutes. It is interesting to note, however, that a saving clause need not be inserted to keep repealed acts in force "as to existing powers, inchoate rights, penalties incurred, and pending proceedings", because a general statute in Iowa has long served to do that very thing: it is a rule of construction expressly laid down that the repeal of a law does not "affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed." And although such a regulation does not bind future General Assemblies, it will control unless expressly repudiated. Accordingly, a saving clause such as "This act shall in no manner affect pending litigation", is altogether superfluous wherever it occurs in Iowa statutes.¹³⁷

PLACE FOR PROVISOS AND EXCEPTIONS

The reader is not infrequently irritated by a statute which starts out as if it were universal in its application and winds "up by a parenthetical qualification or proviso which limits it to certain occasions only". A section which ends with a proviso or an exception contributes to confusion in the law and can be easily avoided by more direct methods of statement. If exceptions or exemptions are necessary, it is well to put them in a short section at the beginning of the act, or wherever it is natural to do so.¹³⁸ This suggestion might have been carried out in a statute of 1902, the first section of which authorizes the electors "of any city whose corporate limits are divided by a meandered stream" to petition for and obtain a river front improvement commission. The law goes to some length in outlining the powers and duties of the commission, and then in the next to the last or fifteenth section indicates the cities affected:

The provisions of this act shall apply only to cities acting under special charter and cities of the first class acting under the general incorporation laws having a population of less than twenty-five thousand (25000).

The fact so stated at the end is misplaced: it should have been merged with the first section.

USE OF THE WORD "CONSTRUE"

In this connection something should be said about the practice of inserting a proviso or a section near the end of a statute to explain how the act should be construed. One reads, for instance, the following:

Provided, always, That nothing in this act shall be so construed as to legalize any act or acts of said Isaac Parsons, which

would have been illegal had the aforesaid section not been enacted.

A law permitting railroad corporations to condemn land for channels and ditches for the drainage and better protection of the right of way and roadbed contains a section to the effect that the "true intent of this act is not to create in favor of a railroad corporation any additional right to divert a water-course from its natural channel, but simply to give the right to condemn the land necessary for the right of way in all cases where by conveyance to the railroad corporation it would have the right to dig such channels or ditches". Another statute declares that its provisions "shall be liberally construed to promote the leveeing, ditching, draining and reclamation of wet, overflow or agricultural lands". A similar attitude is bespoken "in favor of the state for the purpose of the protection of the child from neglect, or omission of parental duty toward the child by its parents, or other persons standing in loco parentis". Another act is not to "be construed to forbid the selling or shipping of parrots, canaries or any other cage birds".

All such statements, it is submitted, attempt to make statutes more exclusive or inclusive than the language used in the law might indicate: the draftsman seems to have a lurking fear lest his enactment will prove too harsh or be trimmed by courts of law. But directions as to how an act is to be construed, like provisos, reach no end which could not be better attained by the use of plain, straightforward English.¹³⁰

ABSURDITY OF PROVISO

Provisos, exceptions, and saving clauses are no longer favored, because they are unnecessary. They would not

be "the bane of all correct composition" if draftsmen had better command of the materials to be embodied in their statutes. Scores of enactments are riddled by provisos and exceptions. For example, the law for the protection of wild birds, their nests, and eggs begins by excepting numerous "game birds"; in the fifth section certain persons are excepted from the operation of the act; in the eighth section "the English, or European house sparrow, great horned owl, sharp shinned hawk, Cooper's hawk, and blackbirds and crows" are excepted from protection; and still farther on a special rule is laid down with reference to domestic pets, parrots, and canaries. The whole statute illustrates slovenly arrangement and therefore unnecessary length.¹⁴⁰

One of the "blue laws" of early Iowa illustrates the absurd style which was once prevalent and still seems to have the sanction of authority. The first section of the act "for the prevention of certain Immoral Practices" consists of the following commandment:

That if any person of the age of fourteen years or upwards, shall be found on the first day of the week, commonly called Sunday, rioting, quarreling, fishing, shooting, or at common labor, (works of necessity and charity only excepted,) he or they shall be fined in any sum not exceeding five dollars: *Provided*, nothing herein contained shall be so construed as to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent persons from travelling, watermen from landing their passengers or freight, or ferrymen from conveying any person over the waters on such day.

How much more simply this thought can be expressed by a draftsman was pointed out by a critic over seventy years ago. Of the anomalous use of the proviso, he declared: "Wherever matter is seen by the writer to be in-

capable of being directly expressed in connexion with the rest of any clause, he thrusts it in with a proviso. Whenever he perceives a disparity, an anomaly, an inconsistency, or a contradiction, he introduces it with a 'provided always'." The same writer asserted his belief that "out of many hundreds of provisoes not one is to be found legitimately introduced . . . and if it were limited to proper occasions it would not ordinarily make its appearance once in all the Acts of a session."¹⁴¹ As matters now stand, nothing makes the reader of statutes so dizzy as the prevalence of these hoary provisos.

CLEARNESS AND DIRECTNESS OF EXPRESSION

The language of Iowa statutes has always given rise to more or less confusion and uncertainty. That the imperfection of all human language is one of the causes may be gathered from what one writer has well said:

The greatest care, the highest art, the fullest mastery of diction, have not always availed to banish obscure passages. . . . Even if a writer has a clear conception of the thoughts which he wishes to express, and chooses with extreme accuracy the precise words which convey his meaning, he cannot be certain that his readers will understand those words in the same sense as that in which he has used them.¹⁴²

Now, if the law is for the most part "an ill-connected mass of ill-expressed provisions", certain fundamental conceptions have not been drilled into the minds of those who are responsible. If it were generally recognized "that the essentials of every law are simple, and that their direct expression is the perfection of law writing, the greatest defects of our statute law would cease." Judging from the language used in some statutes, one concludes that the draftsmen have a notion "that legis-

lative language must be intricate and barbarous", that antique phrases are essential to law-writing, and that the merit of a law mounts "higher in proportion as the author can succeed in including a greater number of limitations, qualifications, conditions, and provisoes". A man experienced in the technique of draftsmanship states that it is "a clear mistake to think that this absurd style, prevalent as it is, and much as we sacrifice to adhere to it, has the sanction of authority. The bills prepared by judges and well-informed lawyers, or by men really practised in the forms of legal expression, have at all times been, as a rule, remarkable for simplicity and directness, and allowing occasionally something to the technical nature of the subjects, for the popularity of their style and construction."¹⁴³

CONFUSED STATEMENTS

There is no limit to the number of examples of confused statement which may be found in the Iowa statute books. Especially confusing are lengthy sections wherein words, phrases, and clauses are heaped up in such a chaotic mass that it takes the reader a long time to disentangle the substantial elements of the enactment. Split up into two or three short sections and rearranged, the ideas expressed in the following statute would not be a puzzle at all:

That it shall be unlawful for any person, except on his own premises and for his own exclusive use, to kill, ensnare, or trap any wild deer, elk or fawn, prairie hen or chicken, between the first day of January and the first day of August in each and every year; any wood-cock between the first day of January and July in each year; any quail, ruffed grouse, or pheasant, between the fifteenth day of December and the twelfth day of September;

or any wild turkey between the first of February and the first of September: *Provided*, That, except on his own premises, it shall be further unlawful for any person to net, ensnare, or trap any of said game except in the month of December: *And provided further*, That except on his own premises it shall be unlawful for any person to ensnare, net, or trap any quail at any time of the year prior to the first of December, 1872.

The attempt to say too much before a period is reached usually leads to confusion of expression, as may be gathered from scores of statutes, of which the following is a brief example:

That chapter 18, of the laws of the twenty-third general assembly be amended by striking out the first section thereof and inserting in lieu thereof the following, to-wit: "Section 1. That it shall be unlawful for any corporation, company or person operating any line of railroad within this state, any car manufacturers or transportation company using or leasing cars, to put in use in this state any new car or any old car that has been to the shop for general repairs to one or both of its draw-bars that is not equipped with automatic couplelers [couplers] so constructed as not to require any person or persons to be between the cars when the act of coupling [coupling] or uncoupling [uncoupling] is done."

Legislation enacted by different General Assemblies on the same subject results in considerable ambiguity and confusion. It would appear that draftsmen do not always know what their predecessors have done in the same field, so that much repetition of old law accompanies new legislation. At one session the legislature prohibits the sale of intoxicating liquors or of cigarettes, and at a subsequent session without expressly repealing the existing law adds that any person may sell either under certain circumstances.¹⁴⁴ Hence, the law declares, "You

shall not" in one place and "You may" in another. And although a recent repealing statute no longer bars proceedings against one who sells intoxicating liquors, much of the "mulet law" still remains in the statute book, as, for instance, the section:

Every person, partnership or corporation, except persons holding permits, carrying on the business of selling or keeping for sale intoxicating liquors, or maintaining a place where intoxicating liquors are sold or kept with intent to sell, shall pay an annual tax in quarterly installments as hereinafter provided. . . .¹⁴⁵

The "loan shark law" of 1915 is featured by prolixity, confusion, and ambiguity. To quote:

Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall take or receive, or agree to take or receive directly or indirectly by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money a rate greater than two per cent per month, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law.

What is the meaning of the phrase, "for the forbearance"? If this act permits a rate as high as two percent a month or twenty-four percent a year, and the existing law permitted a rate as high as eight percent, what is meant by the provision that nothing in the new law "shall be construed as authorizing a higher rate of interest than is now provided by law"? Perhaps "now" refers not to the old but to the new law itself.

The word "herein", like two others which are frequently found in statutes — "hereinbefore" and "hereinafter" — cause considerable trouble. They do not make clear whether they refer to provisions in the same section or in the same act. When they are transferred to the Code, they cause even more uncertainty. Such referential words may, moreover, occur in clauses or sections which occupy different places from those assigned to them by the original draftsman.¹⁴⁶

AMBIGUITY OF WORDS

Care is generally taken to use the same word with the same meaning throughout a statute: otherwise those who must obey the law may be confused by ambiguity. This standard of uniformity "should be kept, indeed, not only throughout the individual act but in all laws in which the terms appear." A lengthy Interpretation Act in England is meant for just such a purpose, defining as it does a considerable number of words and phrases which recur in legislation and which draftsmen are supposed to use at all times without variation of meaning. Similarly, the Iowa law defines certain terms employed in statute-making, but oftentimes one finds important words in an act separately defined to meet the test of uniformity throughout. For example, in the law which provides for an official trademark for Iowa manufactured products, the word "manufacturer" is declared to mean "any person, firm, or corporation engaged in manufacturing in the state of Iowa." Such an explanation not only obviates the necessity of a draftsman's using a long series of words many times, but also requires the reader of a statute to keep one idea constantly in mind.

Some words have been used in different senses in dif-

ferent acts: "workshop" and "mill" and others once meant a place where five or more wage-earners were employed for a certain stipulated compensation, but now they mean any place without regard to the number of employees; the word "railroad" has gradually been extended to include interurbans, automobile railways, and trolley or electric railroads; and "delivery" in one act means transfer of possession, actual or constructive, from one person to another, and elsewhere it means voluntary transfer of possession from one person to another.¹⁴⁷

Among the words which help to make the law uncertain are those which appeal to the judgment as does the word "reasonable" in the following acts:

. . . . Any person operating a traction engine upon the public highway shall remain stationary so long as may be reasonable to allow such horse or animal to pass, and use reasonable caution while such horse or animal is passing. . . .

Every person owning or operating a street railway in this state shall equip all of its double truck passenger cars with power brakes other than hand, capable of bringing such cars to a stop within a reasonable distance. . . .

The reasonable and necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

Such words lack definiteness, and when a law-suit arises involving them, the jury determines what is reasonable in the case. On the other hand, it is difficult to find substitutes for such vague expressions because of the impossibility "of establishing a general rule which will

not sometimes be too lax or too stringent": in other words a rule can not always be worded to fit all cases. But where a definite statement can be made, litigation is lessened, because there is little room for difference of opinion. Other words express a relative quality which may be interpreted as being *more* or *less* characteristic of a given act or condition. It is true that such words as "good standard", "dangerous", "plainly", "unsound", and "unsafe" can not wholly be avoided, but their indefiniteness is sometimes "cured or lessened by definition or by referring to some measure scientifically established." Thus, for example, to be fit for the Iowa market oil of turpentine must have an index of refraction at twenty degrees Centigrade not less than 1.4680 nor greater than 1.4725.¹⁴⁸

MANDATORY AND DIRECTORY LANGUAGE

The words which are least uniformly and most carelessly used are "shall", "must", and "may". From the reading of an act containing these auxiliaries one is not always clear as to whether the statute "intends to command or to lay down optional rules for the guidance of those who are to obey the law." This uncertainty is enhanced by the decisions of courts which sometimes construe "shall" to mean simply "may", or "may" to mean "shall".¹⁴⁹ The ordinary significance of the two terms is clearly set forth in the following extract:

In all cities and towns including cities organized under special charter, now or hereafter having an organized fire department, there may be and in all such cities having a paid fire department there shall be annually levied. . . .

"May" was substituted for "shall" in the statute which requires that the "road supervisor shall keep the

roads in as good condition as the funds at his disposal will permit, and may place guideboards at crossroads".¹⁵⁰ This action indicates that the original "shall" was regarded as imperative, although it was intended to confer discretion upon the officer affected.

The word "must" ordinarily leaves little doubt but that a command is intended, as where corporations before commencing business "must adopt articles of incorporation, which must be signed and acknowledged". It is obvious that "shall" is used in different connections in the following statement:

Farmers' mutual cooperative creamery associations
whose patrons shall share equally in expense and profits
shall be exempt from the payment of the incorporation filing fee
provided herein.

The first "shall" should be omitted because it is superfluous and is not used in the same sense as the second, which is plainly imperative. "Shall" helps to confer discretion when the law declares that any railroad or street car conductor "shall have the right to refuse to permit" certain persons to ride.

That an option is granted by the word "may" is clear where the law declares that "the state dairy and food commissioner may withhold a license from any applicant therefor, whom he may deem unworthy, and he may revoke any license issued under this act." While such language is clearly permissive or directory, it is peremptory in the enactment that "any county attorney, sheriff, mayor, police officer, marshal or constable shall be removed from office by the district court or judge upon charges made in writing and hearing thereunder" for certain specified causes. The same can be said for the law which reads:

The head and feet of each crow, upon which said bounty shall have been paid, shall be destroyed by the auditor of the county wherein such crow was taken and killed, as soon as proof has been accepted, by him.

In this connection it may be well to point out that statutes are phrased less artificially and more clearly where all mandatory language is stated directly in the negative. Where the law declares in effect that a person who "bootlegs" shall be guilty of a misdemeanor, the language may be made stronger by substituting a negative for the affirmative form of expression, as was done in the law that "no person shall operate or drive a motor vehicle who is under fifteen years of age, unless such person is accompanied by the owner of the motor vehicle being operated." Again, negative language leaves little doubt in the following:

No person, firm, or corporation shall operate or conduct a bakery, candy factory, ice cream factory, canning factory, slaughter house, meat market, or place where fresh meats are sold at retail, without being licensed by the state dairy and food commissioner.

ENUMERATION OF PARTICULARS

Very often a statute enumerates the particular persons or things to which it is to apply. Thus, "the owner, operator, lessee or person in charge of any gypsum mine shall make or cause to be made an accurate map or plan of such mine." Another law provides that any person beneficially entitled to property or interest therein because of a gift, legacy, devise, annuity, transfer or inheritance, all administrators, executors, referees and trustees, a grantee under a conveyance, a donee under a gift, and a legatee, annuitant, devisee, heir or beneficiary

shall be liable for all taxes to be paid by them. The same law specifies particularly the properties of a decedent which are not subject to the terms of the collateral inheritance tax.

Another law prohibits the employment in food-producing establishments of all persons affected with certain diseases "or any other infectious or contagious disease." Where the statute declared that the persons who agreed "to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, shall be guilty of a conspiracy", it was held that the word "commodity" was not broad enough to include labor, skilled or unskilled, but was qualified by the words just after and took its meaning from the specific cases mentioned.¹⁵¹ In short, the general terms of an enumeration are restricted by the particular words which just precede or follow.

If a statute is to apply to a class generally, it is safest to name the class in general terms rather than to mention particular cases, followed by general language. Thus, in the clause "if a baker, brewer, distiller, or other person, shall sell, offer or expose to sale, any unwholesome bread, beer, or liquor whatsoever", the words "other person" might be taken to mean someone engaged in a pursuit similar to those of the persons named. Similarly, where "articles of food" are described to include "fresh meat fresh fruit, fish, game, poultry eggs, butter, and other articles intended for human consumption", do the last words refer to all kinds of food other than those specifically named or only to similar kinds? If the former, articles of food would have been sufficiently defined as "food intended for human consumption". Accordingly, enumerations that seem to be perfectly clear are really uncertain.

LENGTHY SENTENCES

The most striking feature of the language of statutes in Iowa is the extraordinary length of many sentences, a fact which compels the reader to conclude that legislators consider the long sentence the height of accomplishment in draftsmanship. Prolixity "is no more the necessary attribute of the science of jurisprudence, than that of any other science." There is a limit to every person's power of apprehension, "beyond which if you add article to article, the whole shrinks from under his utmost efforts". The fact that "voluminousness is of itself a poison to perspicuity" has, nevertheless, been constantly ignored by lawmakers. Sentences ought to be and can be made as short and simple as desired. Indeed, any long-winded sentence can be broken up and recast into many short sentences, which would very much enhance the clearness of statutory expression.¹⁵² Frequently a long series of subjects is followed by many predicates and by many dependent clauses of coördinate value. If the subject were repeated with each predicate, the length of the statute would be appreciably increased, but in all such cases it is possible to use the detached form of statement, that is, paragraph each predicate, every dependent clause, and the parts of the sentence upon which these clauses depend. A good example of a long sentence is the following:

If any reputable citizen of the county make oath before a magistrate, that he has probable cause to suspect, and does suspect, that any house, place or building, naming the house, building or place, as nearly as may be, and the occupant, is unlawfully used as a place in which to receive, keep, store, sell or give away cigarettes, cigarette papers or cigarette wrappers, or any paper made or prepared for the purpose of making cigarettes, or for the

purpose of being filled with tobacco for smoking; or that the occupant is in any way concerned, engaged or employed in owning or keeping any such cigarettes or cigarette papers or wrappers, with intent to violate the law, or authorize or permit the same to be done, such magistrate shall issue his warrant particularly describing the place to be searched and the person or persons to be apprehended or things to be seized directed to any peace officer in the county, for the purpose of searching such house, building or place and for the seizure of such cigarettes, cigarette papers or cigarette wrappers, or any paper made for the purpose of making cigarettes, and for the apprehension of the occupant or keeper thereof; and the said cigarettes or cigarette papers and the keeper shall be brought before such magistrate to be dealt with as provided by law.

The detached form of stating what would otherwise be a long sentence is exemplified in the following short statute:

A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.
3. By the intentional cancellation thereof by the holder.
4. By any other act which will discharge a simple contract for the payment of money.
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

PUNCTUATION OF STATUTES

When a sentence rambles along, covering half a page and not infrequently a whole page or more, the reader is impressed by the formidable task before him. Very often, to be sure, clearness does not suffer where the lengthy sentence is purely an effect of punctuation, but

even in such an instance it is desirable to punctuate by periods where this may be done and to omit unnecessary conjunctions. As a general thing the session laws of Iowa are not well punctuated, due perhaps to the old rule that punctuation is no part of a statute. Proper punctuation helps to make the law clear and ought to be more and more insisted upon even though the courts in getting at the legislative intent construe acts by the rule of common sense.¹⁵³ It is not necessary here to cite examples of a defect so characteristic of the statutes enacted at every session of the legislature. Sometimes, when a mark of punctuation has been omitted, the editor of the published laws supplies the omission as in the following:¹⁵⁴

The term "articles of food" as used in this act shall be construed to mean and include fresh meat, fresh fruit, fish, game, poultry[,] eggs. . . .

Long sentences very often consist of several clauses separated by semicolons. In all such cases much can be gained by using periods instead. Lengthy complex sentences likewise can be simplified by converting the clauses into a series of short sentences. Although the use of periods in such cases results in conciseness of statement, Iowa legislators have greatly neglected this mark of punctuation. In recent years they have given more attention to other marks as is shown by the following amendments: Section 615 of the Code was altered by striking out a period and substituting a semicolon to be followed by a proviso; and a semicolon was stricken out of Section 696 to be replaced by a comma. In the latter case, however, other semicolons in similar places are retained. That the long sentence seems to be an end in itself is clear from a statute which amends another by

changing a period for a comma and adding: "but the provisions of this section shall not prevent the taking of carp sucker, redhorse or buffalo in the day time by use of a spear in any months except March and April."

The fruit of overloaded sentences is obscurity and complexity; they are like barbed wire entanglements which must be battered down at the expense of much trouble; and Bentham's excellent criticism may well cause legislators to take heed:¹⁵⁵

As in the case of bodily, so in the case of mental labour—what oppresses a man is not so much the absolute magnitude of the quantity of the work he has to go through, as the shortness of the time he has to do it in,—or rather the quantity which it is necessary for him to go through, before it is in his power to take repose.

The long-drawn-out sentences and sections of Iowa laws present a striking but not flattering contrast to the language of the Roman code of Justinian, the code of Germany, and the famous Code Napoleon, the longest paragraphs of which seldom exceed one hundred words.¹⁵⁶

NOTES AND REFERENCES

¹ Quoted from Lieber's *Legal and Political Hermeneutics* (Hammond's Edition), p. 20.

² Coode's *On Legislative Expression*, title page.

³ Blackstone's *Commentaries*, Sec. 1 of the Introduction.

⁴ Bentham's *Works* (Bowring's Edition), Vol. III, pp. 231-283, Vol. X, p. 292.

⁵ Ilbert's *Legislative Methods and Forms*, p. 125.

⁶ *Proceedings of the American Bar Association*, 1913, p. 629.

⁷ *Code of 1873*, Sec. 36; *Laws of Iowa*, 1876, p. 122.

⁸ *Code of 1897*, Sec. 39.

⁹ *Laws of Iowa*, 1838-1839, pp. 321-323.

¹⁰ The laws passed by the session of 1860-1861 anticipated the practice.

¹¹ The Iowa State Bar Association in June, 1916, went on record as favoring such a publication at the close of each session of the legislature.—*Proceedings of the Iowa State Bar Association*, 1916, pp. 215, 218. *Supplemental Supplement to the Code of Iowa*, 1915, Secs. 224-h, 224-i, 224-j, contains provisions for the publication of the laws.

¹² These notes are found under the titles of statutes in the *Laws of Iowa*, from 1843 to 1846, and above the titles in the *Laws of Iowa*, 1861 (Extra Session), but none appear in the *Laws of Iowa*, 1873.

¹³ *Code of 1897*, Sec. 38.

¹⁴ This definition of "statute law" can be found in Wilberforce's *Statute Law*, p. 8.

¹⁵ Willard's *A Legislative Handbook*, p. 253.

¹⁶ Pope's *Dunciad* states the matter accurately in the lines:

"Index-learning turns no student pale,
Yet holds the eel of science by the tail."

¹⁷ *Laws of Iowa*, 1890, p. 186.

¹⁸ *Laws of Iowa*, 1884, p. 232.

¹⁹ *Private, Local, and Temporary Acts*, 1874, p. 88.

²⁰ *Laws of Iowa*, 1872, p. ii.

²¹ *Code of 1897*, Secs. 35, 37.

²² *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 224-j.

²³ *Laws of Iowa*, 1913, p. 235.

²⁴ *Laws of Iowa*, 1913, p. 240.

²⁵ Wilberforce's *Statute Law*, p. 218.

²⁶ See the resolutions in *Laws of Iowa*, 1838-1839, and *Laws of Iowa*, 1884.

²⁷ As shown by the titles of statutes for the past ten years.

²⁸ *Constitution of Iowa*, 1846, Art. III, Sec. 26; and *Constitution of Iowa*, 1857, Art. III, Sec. 29.

²⁹ *Laws of Iowa*, 1852, p. 70.

³⁰ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, pp. 133, 134, Vol. IV, pp. 180, 181.

³¹ Cooley's *Constitutional Limitations* (Seventh Edition), p. 205. On this point the Supreme Court of the State of Iowa in 2 Iowa 282 declared: "The intent of this provision of the constitution was, to prevent the union, in the same act, of incongruous matter, and of objects having no connection, no relation. And with this, it was designed to prevent surprise in legislation, by having matter of one nature embraced in a bill whose title expressed another."

³² 26 Iowa 340, at 345, 346.

³³ 44 Iowa 88, at 91, 92.

³⁴ 131 Iowa 668.

³⁵ *Laws of Iowa*, 1904, p. 107.

³⁶ *Laws of Iowa*, 1904, p. 26.

³⁷ Willard's *A Legislative Handbook*, pp. 9-11.

³⁸ 8 Iowa 82, at 86.

³⁹ 12 Iowa 1, 10.

⁴⁰ 135 Iowa 30, 31. Numerous decisions by the Supreme Court cover the same point.

⁴¹ To quote from Cooley's *Constitutional Limitations* (Seventh Edition), p. 209: "There has been a general disposition to construe the constitutional provision liberally, rather than to embarrass legislation by a construction

whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted.''

⁴² 165 Iowa 731; 168 Iowa 1; 2 Iowa 280.

⁴³ *Code of 1873*, Sec. 41; *Code of 1897*, Secs. 41, 41-a; *Laws of Iowa*, 1904, p. 1.

⁴⁴ 131 Iowa 347.

⁴⁵ *Laws of Iowa*, 1868, p. 204.

⁴⁶ *Iberty's Legislative Methods and Forms*, pp. 272, 273.

⁴⁷ *Bentham's Works*, Vol. II, pp. 382, 383.

⁴⁸ *Laws of Iowa*, 1838-1839, p. 516.

⁴⁹ *Constitution of Iowa*, 1857, Art. III, Sec. 1.

⁵⁰ *Laws of Iowa*, 1846, p. 127.

⁵¹ *Shambaugh's Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 366.

⁵² *The Register and Leader* (Des Moines), April 1, 1909, p. 2.

⁵³ *Laws of Iowa*, 1913, p. 427. A statute on page 23 of the same volume duplicates the language of the resolution, but adds a definite appropriation of money. See also *Laws of Iowa*, 1884, p. 237.

⁵⁴ *Laws of Iowa*, 1913, pp. 422, 427.

⁵⁵ *Constitution of Iowa*, 1857, Art. III, Sec. 24; *Laws of Iowa*, 1884, p. 232.

⁵⁶ *Laws of Iowa*, 1898, p. 26; or *Code Supplement of 1913*, Sec. 1380-c.

⁵⁷ *Shambaugh's Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 192, 193, Vol. VII, pp. 187-189.

⁵⁸ *Laws of Iowa*, 1858, p. 100, 1913, p. 373.

⁵⁹ *Laws of Iowa*, 1884, pp. 225, 227.

⁶⁰ For examples see *Laws of Iowa*, 1898, p. 82, 1913, pp. 5, 6, 366, 371, 381, 391.

⁶¹ *Bentham's Works*, Vol. I, p. 465.

⁶² *Bentham's Works*, Vol. V, pp. 442, 443.

⁶³ *Laws of Iowa*, 1840 (Extra Session), pp. 28-61.

⁶⁴ *Laws of Iowa*, 1838-1839, pp. 142-172.

⁶⁵ *Laws of Iowa*, 1838-1839, pp. 282-320.

- ⁶⁶ *Laws of Iowa*, 1838-1839, pp. 73-75.
- ⁶⁷ *Laws of Iowa*, 1907, pp. 38-49.
- ⁶⁸ *Laws of Iowa*, 1838-1839, pp. 76-87, 1915, pp. 342-344.
- ⁶⁹ *Laws of Iowa*, 1838-1839, pp. 128, 255, 1913, p. 40.
- ⁷⁰ *Laws of Iowa*, 1838-1839, pp. 419-426, 471-513. See also *Laws of Iowa*, 1892, pp. 47-62, 1909, pp. 48, 51, 95, 152.
- ⁷¹ Examples can be found in *Laws of Iowa*, 1904, p. 108, 1907, pp. 4-6, 44-46, 1909, p. 11, 1913, pp. 62-67, 87, 109, 114, 174.
- ⁷² *Laws of Iowa*, 1913, pp. 154-172, 279.
- ⁷³ Quoted from Willard's *A Legislative Handbook*, p. 149.
- ⁷⁴ Ilbert's *Legislative Methods and Forms*, pp. 244, 245.
- ⁷⁵ *Laws of Iowa*, 1902, pp. 81-99.
- ⁷⁶ *Laws of Iowa*, 1913, p. 130.
- ⁷⁷ Willard's *A Legislative Handbook*, p. 77.
- ⁷⁸ *House Journal* (Iowa), 1909, p. 99, 1911, p. 27.
- ⁷⁹ *Laws of Iowa*, 1898, p. 13, 1904, p. 1; *Code Supplement of 1913*, Sec. 41-a.
- ⁸⁰ See for instance the *Code Supplement of 1913*, Sec. 735, editorial note.
- ⁸¹ *Laws of Iowa*, 1909, pp. 1-5.
- ⁸² Willard's *A Legislative Handbook*, p. 55.
- ⁸³ See Jones's *Statute Law Making*, p. 142.
- ⁸⁴ Willard's *A Legislative Handbook*, p. 55; Jones's *Statute Law Making*, p. 152.
- ⁸⁵ Stimson's *Popular Law-Making*, pp. 357, 362; Jones's *Statute Law Making*, p. 150.
- ⁸⁶ 12 Iowa 58.
- ⁸⁷ 12 Iowa 453; also 31 Iowa 102; 35 Iowa 167.
- ⁸⁸ 38 Iowa 175; 73 Iowa 619.
- ⁸⁹ As was done in the case in 73 Iowa 619.
- ⁹⁰ Jones's *Statute Law Making*, p. 152; 121 Iowa 19.
- ⁹¹ Willard's *A Legislative Handbook*, pp. 50-54; Jones's *Statute Law Making*, pp. 145, 146, 147-150.
- Suppose a general act is passed or amended or reenacted which deals with

a subject upon which there has been local or special legislation: a doubt arises as to whether the legislature intends "to reduce action all over the State to uniformity and obliterate the locally divergent cases." A general repealer so indicating or a clause stating an intent not to repeal is the proper means to obviate the doubt. Again, if "a former general statute clashes with a later special one, . . . the latter repeals the former only as to the cases to which it applies." See also 10 Iowa 441.

⁹² *Code Supplement of 1913*, Sec. 41-a.

⁹³ *Laws of Iowa*, 1838-1839, p. 73.

⁹⁴ *Constitution of Iowa*, 1846, Art. IV, Sec. 27.

⁹⁵ *Code of 1851*, Secs. 20-25.

⁹⁶ *Laws of Iowa*, 1846-1847, Resolution No. 21.

⁹⁷ The General Assembly in 1855 tried to simplify matters by providing that whenever the Governor should "deem it necessary that any law or laws of a general nature should take effect at an earlier day than by their general publication and distribution," he might "in writing direct any such law to be published in any papers published in this State, and from such publication thus directed, such law shall be in full force and effect." The Supreme Court, however, blocked this by declaring it an unconstitutional attempt to delegate and confer upon the Governor a power that belonged solely to the legislature. See *Laws of Iowa*, 1855-1856, p. 169; 1 Iowa 70, 522.

⁹⁸ *Constitution of Iowa*, 1857, Art. III, Sec. 26; *Revision of 1860*, Secs. 23-28; *Code of 1873*, Secs. 32-35; *Code of 1897*, Secs. 35, 36, 37.

⁹⁹ *Laws of Iowa*, 1913, p. 182; *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 1571-m15a.

Of course, contrary to the general statutory rule, the General Assembly may provide for the publication of an act in only one newspaper or may declare that an act shall go into effect upon publication, for it is not in the power of the legislature to say that the laws passed by future sessions shall not take effect at any time they see fit to declare. Such an attempt to abridge legislative liberty has been declared inoperative by the Iowa Supreme Court.— 17 Iowa 313.

Usually an act of a public nature is ordered published in two Des Moines newspapers and an act of a private nature appears in one of the capital city newspapers and in some newspapers of the locality the inhabitants of which are affected by the statute. By a recent statute legislative acts which are to operate after publication are published in two or more newspapers, at least one of them at Des Moines, and in case either or both of the newspapers

named in the act fail or decline to publish the act as required, the Secretary of State designates another paper or papers in which publication shall be made. If the papers are not designated in the act, they may be selected by the Secretary of State, and the act is published accordingly. All such acts take effect from the date of the last publication, and the Secretary of State makes and signs on the original roll of each act a certificate, stating in what papers it was published, and the date of the last publication in each of them. The certificate printed at the foot of the act is presumptive evidence of the facts which it states.—*Code Supplement of 1913*, Secs. 36, 36-a.

¹⁰⁰ See *Supplemental Supplement to the Code of Iowa*, 1915, pp. xiii-L.

¹⁰¹ Ilbert's *Legislative Methods and Forms*, p. 268.

¹⁰² *Laws of Iowa*, 1838-1839, pp. 52, 58, 59, 122-125, 318-320, 425. See also *Laws of Iowa*, 1913, pp. 96, 97, 100, 101.

¹⁰³ Thring's *Practical Legislation*, pp. 100, 132, 133; Ilbert's *Legislative Methods and Forms*, pp. 266, 267; Jones's *Statute Law Making*, p. 211.

¹⁰⁴ *Laws of Iowa*, 1913, pp. 125-129.

¹⁰⁵ *Laws of Iowa*, 1838-1839, pp. 77-87, 128, 255.

¹⁰⁶ *Laws of Iowa*, 1913, pp. 155, 156, 159-163, 280-282; *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 4999-a31.

¹⁰⁷ *Laws of Iowa*, 1874, pp. 62-76, 77-87, 1890, pp. 98-114, 1913, pp. 333-336.

To prevent the overloading of statutes with administrative details as was done in 1874, the legislature may permit offices and officers to work out the details: the State Railroad Commissioners, for instance, now have the power to make schedules of rates and other railroad regulations. In *Laws of Iowa*, 1913, p. 65, the General Assembly confers upon certain cities the power to create a department of public docks and confers upon such a department the power to make a schedule of charges and regulations. See also *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 2033-k.

¹⁰⁸ Bentham's *Works*, Vol. I, pp. 465, 466.

¹⁰⁹ Bryce's *Studies in History and Jurisprudence* (Oxford University Press), Vol. II, p. 670. See also Bentham's *Works*, Vol. II, p. 355.

¹¹⁰ Craies's *A Treatise on Statute Law*, p. vii.

¹¹¹ Willard's *A Legislative Handbook*, p. 170.

¹¹² Willard's *A Legislative Handbook*, pp. 181, 188-190.

¹¹³ *Laws of Iowa*, 1909, p. 203.

¹¹⁴ Willard's *A Legislative Handbook*, pp. 171, 184, 185; Ilbert's *Legislative Methods and Forms*, p. 248.

- 115 *Laws of Iowa*, 1909, p. 138; Willard's *A Legislative Handbook*, pp. 186-188.
- 116 *Laws of Iowa*, 1838-1839, p. 120; *Code of 1897*, Sec. 48, paragraph 3.
- 117 Willard's *A Legislative Handbook*, pp. 171, 173, 175.
- 118 *Laws of Iowa*, 1913, pp. 122, 279. See also *Laws of Iowa*, 1878, p. 139.
- 119 *Laws of Iowa*, 1838-1839, pp. 73-75; *Code of 1897*, Sec. 48.
- 120 See *Revised Statutes* (Michigan), 1838, p. 2.
- 121 Ilbert's *The Mechanics of Law Making*, pp. 118, 119.
- 122 Beal's *Cardinal Rules of Interpretation*, p. 300; Thring's *Practical Legislation*, pp. 95, 96; Ilbert's *The Mechanics of Law Making*, p. 119.
- 123 For the three definitions given above see respectively *Code Supplement of 1913*, Sec. 1347-a; *Supplemental Supplement of the Code of Iowa*, 1915, p. 203; *Laws of Iowa*, 1906, p. 76.
- 124 For definitions referred to in this paragraph see *Code Supplement of 1913*, Secs. 1318, 1319, 1846-i, 1571-m1. Consult also the index to the code publications under "Words and Phrases".
- 125 See Ilbert's *Legislative Methods and Forms*, pp. 336-357; Thring's *Practical Legislation*, pp. 109-133.
- 126 Willard's *A Legislative Handbook*, pp. 178-180; Jones's *Statute Law Making*, pp. 126-129; Ilbert's *Legislative Methods and Forms*, pp. 71, 336.
- 127 See for instance *Code Supplement of 1913*, Sec. 958 and editorial footnotes on pp. 282, 283.
- 128 Thring's *Practical Legislation*, pp. 81, 82; Ilbert's *Legislative Methods and Forms*, p. 247.
- 129 For articles on the Iowa codes see *The Iowa Journal of History and Politics*, Vol. IX, pp. 503, 506, 507, 510, 513, Vol. X, pp. 36, 41, 332, 335; *Annals of Iowa*, Third Series, Vol. IV, p. 609.
- 130 Ilbert's *Legislative Methods and Forms*, p. 247.
- 131 Lieber's *Legal and Political Hermeneutics*, pp. 20, 21, 22; Jones's *Statute Law Making*, p. 107.
- 132 *Laws of Iowa*, 1872 (Public), p. 88.
- 133 Coode's *On Legislative Expression*, p. 67.
- 134 *Laws of Iowa*, 1838-1839, p. 277.

¹³⁵ Jones's *Statute Law Making*, p. 202.

¹³⁶ *Laws of Iowa*, 1838-1839, p. 465; Willard's *A Legislative Handbook*, pp. 190-192.

¹³⁷ *Code of 1897*, Sec. 48, paragraph 1.

¹³⁸ Coode's *On Legislative Expression*, pp. 23, 52; *Laws of Iowa*, 1854-1855, p. 228.

¹³⁹ Willard's *A Legislative Handbook*, pp. 168-170.

¹⁴⁰ *Laws of Iowa*, 1906, pp. 75-77.

¹⁴¹ *Laws of Iowa*, 1843-1844, p. 63; Coode's *On Legislative Expression*, pp. 53, 60, 61.

¹⁴² Wilberforce's *Statute Law*, pp. 2, 3.

"Every utterance in words is but a very imperfect presentation of the idea which lies behind, which idea gives birth to the words, and is sought to be announced by them. . . . So is it with any pronounced sentence, it contains infinite possibilities of application. Sympathy with the idea, lying behind the expression, like the applied microscope, brings out its hidden meanings, and enables you to trace it down into its most secret and minute revealings, so that you may apply it to all the affairs of trade and life."—*Revision of 1860*, p. 454, footnote.

¹⁴³ Coode's *On Legislative Expression*, pp. 67, 68.

¹⁴⁴ *Code of 1897*, Secs. 2382, 2432, 5006, 5007.

¹⁴⁵ *Code of 1897*, Sec. 2432, is not affected by the law which repealed the Mulet Law. See *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 2448-a.

¹⁴⁶ Jones's *Statute Law Making*, p. 131.

¹⁴⁷ *Laws of Iowa*, 1911, p. 179; *Code of 1897*, Sec. 2473; *Code Supplement of 1913*, Secs. 2033-b, 2033-f, 2091-a, 2122, 3060-a191, 3138-a58; *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 2473.

¹⁴⁸ Willard's *A Legislative Handbook*, pp. 155-158; *Laws of Iowa*, 1911, p. 124.

¹⁴⁹ Jones's *Statute Law Making*, pp. 111-119.

¹⁵⁰ *Laws of Iowa*, 1909, p. 91; *Code of 1897*, Sec. 1561.

¹⁵¹ 140 Iowa 182; Jones's *Statute Law Making*, pp. 132, 133.

¹⁵² Bentham's *Works*, Vol. IV, p. 4, Vol. X, p. 74.

¹⁵³ Willard's *A Legislative Handbook*, p. 151; Jones's *Statute Law Making*, pp. 136-141.

¹⁵⁴ *Laws of Iowa*, 1913, p. 222. The *Code Supplement of 1913*, Sec. 2528-d, does not contain the bracketed comma.

Sometimes a statute is found to contain a word or more enclosed in brackets where the Secretary of State deemed it necessary to aid the sense. This use of the editorial brackets for the insertion of omitted words has been common, though not frequently indulged in. In some sessional volumes evident errors such as improper or superfluous words in the enrolled bills appear in italics. See *Laws of Iowa*, 1846-1847, p. v, 1872, p. ii.

¹⁵⁵ Bentham's *Works*, Vol. III, p. 248.

¹⁵⁶ Bentham's *Works*, Vol. II, p. 355.

**CODIFICATION OF STATUTE LAW
IN IOWA
BY
DAN E. CLARK**

I

PROBLEM AND PURPOSE OF CODIFICATION IN IOWA

THE movement for the codification or reduction to writing of the Common Law — a movement of which Jeremy Bentham was the first great advocate — has never made much headway either in England or in the United States, although there has been a revival of interest in the question during recent years. But in this country, perhaps more even than in England, the need and importance of codifying the statute law in the various Commonwealths has long been appreciated. From this standpoint a code may be defined as a “body of law established by the legislative authority of the State, and designed to regulate completely, so far as a statute may, the subjects to which it relates.”¹

The purpose of codification in Iowa has been to make as accessible as possible all the statute law of a general nature in force when the codes were adopted. Without occasional compilations and revisions of this kind the citizen who desired to ascertain the law on any given point would be obliged to search through all the volumes containing the laws as enacted at the successive sessions of the General Assembly. Such a search would not only consume much time, but in the case of laws that had been many times amended it would often involve the seeker in endless confusion. The purpose of codification, therefore, has been to collect the statutes that are scattered through the several volumes of session laws; arrange them in a

logical, orderly manner; and make them available within the covers of a single volume.

It was soon realized, however, that a mere compilation of the laws as originally enacted was not sufficient. If a code was to be of real value the codifiers must not only compile the laws, but they must revise them as well. Without changing the meaning of the statutes, they must have the power to rewrite the laws if necessary; to omit obsolete provisions and unnecessary words and phrases; to remove ambiguities and contradictions; and in general to reduce the law as found on the statute books to a harmonious and systematic whole. The end to be kept in view was to make the law clear, concise, and definite, and so plain in form and language as to be intelligible to the ordinary citizen. Later it was found desirable to include annotations of the decisions of the courts bearing upon the various code sections.

Thus the problem and purpose of codification in Iowa has been to keep the laws enacted by the General Assembly up to date by occasionally adopting revisions which supersede all previous legislation on the subjects covered. The results thus far will compare favorably with what has been achieved in other States of the Union: the Iowa codes stand in the first rank among works of their kind. Moreover, the plan devised for the *Code of 1897* with cumulative supplements has been characterized as "the most complete and well-digested of all the plans which have been formulated in the various states for partial and therefore successful codification".²

The brief discussion which follows is an attempt to present an analysis of the main features of the codification of statute law in Iowa from the standpoint of the

methods and product of statute law-making. For a comprehensive history of the codes of Iowa law the reader is referred to the excellent series of articles by Mr. Clifford Powell, which appeared in *The Iowa Journal of History and Politics*, Vols. IX–XII. Indeed, the following pages contain little more than a digest or summary of the articles written by Mr. Powell, to whom, therefore, the writer is indebted for practically all of the data required for the writing of this paper.⁸

II

HISTORY OF THE IOWA CODES

Six official codes have been compiled and adopted in Iowa during the seventy-eight years which have elapsed since the formation of the Territorial government in 1838. To the last of these six codes there have been three supplements — the third supplement being augmented by a supplemental supplement. In addition there have been at least two private compilations of the statute laws of Iowa which in their day were widely used and which bridged the long gap between the publication of the official codes of 1873 and 1897.

THE OLD BLUE BOOK

It was on November 12, 1838, that Governor Robert Lucas, out of the wealth of his experience as legislator and chief executive in Ohio, suggested to the Legislative Assembly of the Territory of Iowa "the appointment of a committee [of] not to exceed three persons, of known legal experience and weight of character, to digest and prepare a complete code of laws during the recess of the Legislature, and to report them for consideration at the ensuing session." By this means, he declared, the people would be "released from the ambiguity of existing laws, and our system of jurisprudence will be established upon a firm foundation, peculiarly adapted to the situation, interests, habits, and wants of our citizens."⁴

The Legislative Assembly, perhaps piqued by what its members may have deemed an undue amount of advice

from the Governor, failed to follow his suggestions. A joint resolution was adopted, however, requesting the judges of the Supreme Court "to furnish this Legislative Assembly, during its present session, with such bills, as will, in their opinion, form a proper code of jurisprudence for Iowa, and regulate the practice of the courts thereof." The request was honored, and "many of the most important laws passed at this first session of the Legislative Assembly were penned by Judge Mason, who was at that time the Chief Justice of the Supreme Court."⁵

Although the legislature took no steps to provide for the compilation of a code in the strict sense of the term, the laws enacted at this session were arranged topically and published in the order of the alphabetical arrangement of their headings; their scope was broad; and the bound volume contained several other important documents. Consequently the session laws of 1838-1839 have always been classed among the codes of Iowa and referred to as *The Old Blue Book*, because of the blue cardboard backs of the volumes as originally bound. The printing was done in 1839 at Dubuque by Russell & Reeves, who received \$3,943 for their work.

The Old Blue Book had a significance much broader than its makers intended. Not only did it serve for four years "as a guide to Iowa's laws", but in 1843 it was adopted as the law of the Territory of Oregon under the provisional government, and it remained in force in that far western country for a period of five years.

THE BLUE BOOK

The best code, however, soon becomes more or less out of date. New laws were passed by the Legislative Assembly at its sessions in 1840 and 1841, and at the

same time many of the provisions to be found in *The Old Blue Book* were amended or repealed. On this account there soon came demands for a revision of the laws. After much debate in both branches of the legislature in December, 1842, a joint standing committee on revision, consisting of four members of the Council and eight members of the House, was appointed. Joseph B. Teas, William H. Wallace, William Patterson, and Robert Christie were the members of the Council who labored on this committee; while the House was represented by Frederick Andros, Henry Felkner, Abner Hackleman, Isaac N. Lewis, Joseph Newell, Joseph M. Robertson, Thomas McMillan, and George H. Walworth. The result of the work of this committee and of the legislature as a whole was the publication of what on the title page is called the *Revised Statutes of the Territory of Iowa, 1842-1843* — a volume that is more popularly known as *The Blue Book*. It was printed in 1843 at Iowa City by Hughes and Williams in an edition of two thousand five hundred copies.

The Blue Book did not differ materially from its predecessor except that it contained nearly twice as many pages. It comprised the statute laws of a general nature in force in the Territory at the close of the legislative session of 1842-1843, arranged alphabetically by chapters under headings that were arbitrary and at times misleading. It was certainly no improvement on *The Old Blue Book* in point of form and arrangement, and in many respects it was distinctly inferior. Its defects became immediately apparent — as is suggested by the fact that within a year an Iowa City editor remarked that one “very necessary work to be performed by the present Legislature will be to *revise the Revision*.” But the

question of admission into the Union was now overshadowing all other problems, and it was not until after statehood had been achieved that another codification of the laws of Iowa was urgently demanded.

THE CODE OF 1851

By the time the General Assembly convened for its session of 1847-1848 the need of a revision of the laws had been so well impressed upon the minds of the legislators that an act for this purpose was approved by the Governor on January 25, 1848. A commission consisting of Charles Mason, William G. Woodward, and Stephen Hempstead was appointed "to draft, revise and prepare a code of the laws for the State of Iowa." These commissioners were to "report said code, with the proper marginal notes and index, under the certificate of their President, to the Governor, at the earliest practical period, together with a correct journal of their proceedings", and they were each to receive for their services the sum of one thousand dollars. Such "books, writing paper, ink, quills, and sand" as were necessary were to be furnished by the State, but all other expenses were to be borne by the commissioners.⁶

The three commissioners thus appointed were men of ability and of prominence in the State. Charles Mason, who had been the Chief Justice of the Supreme Court of the Territory of Iowa, has been characterized as "one of the most learned and scholarly men who ever graced a seat upon any bench." William G. Woodward served on the Supreme Court of Iowa from 1855 to 1860; while Stephen Hempstead was the second Governor of the State and in that capacity gave his executive approval to the code which he helped to compile.

The commissioners performed the work assigned to them and in December, 1850, made their report which, after some debate, was ordered printed for the use of the legislators. With only a few amendments the code as drafted by the commissioners was enacted into law as a single bill, which received the Governor's signature on February 5, 1851, and went into effect on July 1st of that year.

The *Code of 1851* was "a small book when compared with later works, containing only six hundred eighty-five pages of ordinary law book size. The paper used in this volume is of an unusually good quality and mechanically the book is of high order. It was bound in sheep and sold for two dollars and fifty cents a volume. The law provided that six thousand copies should be published, half of which were to be distributed to the organized counties, one thousand to be saved for future needs, and the balance, excluding those given to officials, were to be sold — the Secretary of State being allowed four hundred dollars for the task of making the distribution. . . . William G. Woodward, one of the Commissioners, was appointed to supervise the publication of the Code, and to prepare an index and marginal notes for the same. It is entirely probable that Judge Mason assisted in the work of editing the Code, as some writers have claimed."

In spite of much bitter criticism at the time of its adoption and during the years immediately following, on account of numerous new and radical provisions, the *Code of 1851* has been highly praised by jurists of later years. And "the greatest tribute which could be paid to it is the fact that every code since prepared in the State of Iowa has followed the arrangement set forth in this book and in Iowa's last code are scores of statutes taken directly from the pages of this earlier work."

THE REVISION OF 1860

The decade from 1850 to 1860 was marked by a great increase in the population of Iowa and by a corresponding commercial expansion. New needs and problems demanded legislation on new subjects at each session of the General Assembly. Certain features of the law as embodied in the *Code of 1851*, notably the system of county government, became increasingly unsatisfactory to a large number of the people of Iowa. And especially were radical changes in the laws made necessary by the adoption of the new State Constitution in 1857. Accordingly, in 1858 three commissioners were appointed not only "to conform the laws of the State to the Constitution", but "to prepare a code of civil and criminal procedure, and revise and codify the laws of the State".⁸ The men appointed to perform this task were C. Ben Darwin of Burlington, William Smyth of Marion, and Winslow T. Barker—all men of considerable legal experience and ability, though of perhaps less prominence than the commissioners who drafted the *Code of 1851*.

The report of the commissioners was submitted to the legislature in 1860, and after being printed was hastily discussed, slightly amended, and finally adopted by the General Assembly. C. Ben Darwin was placed in charge of the publication of the *Revision* and was authorized to incorporate in it "all the laws of a general nature passed at this Session, to the end that the volume . . . shall contain, when published, all the laws of a general nature which shall be of force in this State, when the laws of this Session have taken effect."⁹ Ten thousand copies of the *Revision* were printed, the contract being let to John Teesdale of Des Moines at \$1.95 per copy, though the actual printing and binding was done in Hartford,

Connecticut. The volume was quarto in size, contained 1160 pages, and sold for three dollars.

While the *Revision of 1860* followed the arrangement of the *Code of 1851* as to parts, titles, chapters, and sections, it has been regarded by later commentators as a piece of work which by no means measured up to the high standard set by its predecessor. The haste demanded by the legislature, the limitations upon the powers of the commissioners in the matter of making changes in the laws, and the narrow interpretation placed upon their powers by the commissioners themselves resulted in a work which was "in part simply a compilation; and in part, a revision and codification of the laws."

THE CODE OF 1873

The Civil War and subsequent events tended for a time to detract attention from the deficiencies of the *Revision of 1860*, so that it was thirteen years before another codification of the law went into effect. In 1870 a code commission of three members was appointed. Profiting by the experience of 1860 the act was made to include specific instructions, giving the commissioners broad powers. They were to "carefully revise the statutes of this State, rewrite the same, divide them into appropriate parts, arrange them under proper titles and chapters, omit all parts repealed and such as have become obsolete, insert all amendments, so as to make the same complete, transpose words and sentences, arrange and number the same in their proper order, and when necessary change the phraseology by leaving out and inserting words and sentences".¹⁰

William H. Seevers of Oskaloosa, later a Justice of the Supreme Court of Iowa, John C. Polley of Clinton

County, and William J. Knight of Dubuque were the three commissioners named in the act. Mr. Polley, however, removed from the State before the commissioners had really begun their work, and Governor Merrill appointed in his place Chancellor William G. Hammond of the Law Department of the State University of Iowa, "a distinguished teacher, and a man of rare attainments and great learning."

These men proceeded with their task in a careful, diligent manner and submitted the results of their labors to the Fourteenth General Assembly in 1872. Partly because of delay in the printing of the report of the commissioners, and partly because the members of the legislature appreciated the importance of care and deliberation in the adoption of the proposed code, its consideration was postponed to an adjourned session to begin on January 15, 1873, and be devoted to that one purpose. After a session of about one month the code was adopted and provision was made for its publication. Fifteen thousand copies were to be printed, five thousand of which were to be distributed among the counties to be sold at three dollars each. Two thousand dollars was the compensation set aside for the work of editing, which was to be performed by William H. Seevers.

The *Code of 1873* resembled the *Revision of 1860* in size and appearance, though it contained one hundred and twenty-one fewer pages. At the same time it was a great improvement over its immediate predecessor in form and content. Indeed, the late Dean Emlin McClain has declared that "the skill of the commissioners who prepared it was best attested by their successful return approximately to the form and manner of the Code of 1851." By another writer it has been characterized as giving the

law "in a logical and orderly method, in clear and unambiguous language, capable of being understood by all; and although not the equal of the *Code of 1851*, it succeeded admirably in realizing the hopes of its makers."¹¹

For twenty-four years the *Code of 1873* remained in force as the official code of Iowa. Long before the end of this time, however, it had virtually ceased to be used, since it was rendered more and more out of date by the legislation of each successive General Assembly. The lack of a new official code during this period is largely explained by the appearance of two private codes in 1880, one prepared by Judge William E. Miller and the other by Mr. Emlin McClain. These codes were excellent compilations and both were by law made receivable in evidence. Then in 1888 Mr. McClain published a new and larger edition, which "probably had a larger influence than any other private code of Iowa statutes", and which "was in fact the forerunner of the official *Code of 1897*".

THE CODE OF 1897

The early nineties found the necessity of an official recodification of the law of Iowa growing increasingly imperative. Thus it was that in 1894 the Twenty-fifth General Assembly passed an act providing for the drafting of a new code. The commission, consisting this time of five members, was not only given liberal specific directions, but it was also empowered to "change the phraseology and make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible."¹² Two of the commissioners, Horace S. Winslow of Newton and Horatio F. Dale of Des Moines, were appointed by the Supreme Court. The House of Representatives likewise appointed two, namely

Charles Baker of Iowa City and John Y. Stone of Glenwood. The Senate chose as the fifth commissioner Emlin McClain of Iowa City, who may justly be called one of the most eminent jurists Iowa ever produced. Upon the organization of the commission Mr. Winslow and Mr. Baker were selected as chairman and secretary, respectively.

The report of the commission, together with a proposed code, was submitted to the Twenty-sixth General Assembly in 1896. After much discussion it was decided, in the interests of thoroughness, to postpone final consideration to a special session to be called for that purpose by the Governor not later than January of the following year. Beginning on January 19, 1897, the legislature in special session continued its deliberations until May 11th, at which time it adjourned until July 1st in order that the code supervising committee and the code editor might be able to have the code in such shape that it could be published and put into effect within ninety days after final adjournment, thus meeting the requirement of the State Constitution with regard to laws passed at extra sessions. On July 1st the General Assembly reconvened and adopted the code; and on the following day adjourned *sine die*. "In the main part the Code as reported was adopted without any very material changes, but certain portions were completely revised by committees of the legislature".¹³

The work of preparing the earlier codes for publication was in each instance performed by one man. This was not true with the *Code of 1897*. Not only was Ezra C. Ebersole appointed code editor, but provision was made for a code supervising committee, made up of two members of the Senate and three members of the House

of Representatives. The Senators on this committee were James H. Trewin and Lyman A. Ellis; while the lower house chose Parley Finch, W. W. Cornwall, and John T. P. Power.

The *Code of 1897* was much larger than any of its official predecessors, both in number of pages (2362) and in the size of the pages. The increased bulk is largely explained by the extensive and valuable annotations, prepared by Judge McClain, which it contains. An edition of fifteen thousand copies was originally printed by the State Printer at a cost to the State of \$2.68 a copy; and the price to purchasers was five dollars. Justice Horace E. Deemer declared in 1902 that "in spite of the short time given for its publication it is singularly free from error or mistake" and that it was considered to be "as nearly a perfect annotated code as it is possible to make."¹⁴

SUPPLEMENTS TO THE CODE OF 1897

The method which has been followed since 1897 to keep the *Code of 1897* up to date has been to compile and publish supplements at intervals of about five years. Thus there have been three supplements, in 1902, 1907, and 1913. The *Supplement of 1902* contained the legislation enacted since the adoption of the *Code of 1897*, and was a volume of 874 pages of the same size and arrangement as the code itself. Fifteen thousand copies were printed, and the volume sold for two dollars. It was superseded, however, by the *Supplement of 1907*, which contained almost twice as many pages because it likewise embodied all the laws passed by the General Assembly since 1897. Twelve thousand copies were printed and the volume sold for three dollars. But this volume was in

turn rendered obsolete by the *Supplement of 1913*, which for various reasons did not appear until 1915. Containing almost as many pages as the *Code of 1897* itself, this supplement was issued in an edition of twelve thousand copies, the price per copy being four dollars. Each supplement was prepared under the direction of a joint code supplement supervising committee and a code editor — the latter position having been made permanent in 1915 by imposing its duties on the Reporter of the Supreme Court.

Finally, the session laws of the Thirty-sixth General Assembly which convened in 1915 were compiled and issued in the form of a *Supplemental Supplement to the Code of Iowa* — a plan which will be followed hereafter. “The plan”, says Code Editor U. G. Whitney, “contemplates the publishing, in the near future, of a one-volume code and thereafter to have but two volumes of statute law, viz: (1) the Code and (2) a biennial cumulative supplement.”¹⁵

It may not be out of place in this connection to suggest that, in addition to the above plan of publishing the session laws as cumulative supplements to the Code, a small edition of the laws as originally enacted should be issued for each session.

III

PROCESS OF CODIFICATION IN IOWA

THE process which has been followed in codifying the laws of Iowa has been comparatively simple. Except in the case of the two so-called Territorial codes the procedure has been in brief as follows: the appointment of a code commission; the recommendation of a code by the commission; and the adoption of the code, with amendments, by the legislature — adoption taking the form and following the procedure of a statutory enactment.

PROVISIONS FOR CODIFICATION

Each of the official codes has been compiled in accordance with a definite act of the legislature. For *The Old Blue Book* no special provision was made, except that the judges of the Supreme Court of the Territory were requested to submit to the Legislative Assembly “such bills, as will, in their opinion, form a proper code of jurisprudence for Iowa, and regulate the practice of the courts thereof.” During the session of 1842–1843 a joint standing committee on revision, consisting of four members of the Council and eight members of the House, was appointed with power to “revise and compile” the laws of the Territory. The result of this provision was the volume of statute law known as *The Blue Book*. For the compilation of all the official codes adopted since the admission of Iowa into the Union commissions, consisting of from three to five men of prominence and legal ability, not members of the legislature, have been appointed.

Except in the case of the *Revision of 1860* these commissions have been given broad powers. The preparation of each of the three supplements to the *Code of 1897*, on the other hand, has been entrusted to a joint code supplement supervising committee of the General Assembly. Finally, to the code editor was given the duty of compiling the session laws of 1915 in the form of a supplemental supplement — a practice that will probably be followed in the future.

CODE COMMISSIONS AND THEIR WORK

The two Territorial codes, as has been seen, were drafted by the Legislative Assembly with little or no outside assistance, except such as was given by the judges of the Supreme Court in the preparation of *The Old Blue Book*. Beginning with the *Code of 1851*, however, the four official codes of the State period were the work of commissions of men learned in the law who were not members of the General Assembly. The commission which prepared the *Code of 1897* was made up of five men; each of the other commissions was composed of three men. Among the jurists who thus exercised a great influence on Iowa jurisprudence Charles Mason, William G. Hammond, and Emlin McClain stand out preëminently.

Each of the commissions organized by choosing one of its members as chairman. The rules governing the action of the commissions were in each case partly prescribed by the legislature and partly left to the determination of the commissioners themselves. It is noticeable that, with the possible exception of the act providing for the *Code of 1851*, the General Assembly invariably gave the commissioners too little time in which

to perform their work. As a result the appearance of the codes was postponed beyond the dates originally planned. The preparation of the *Revision of 1860*, the poorest of the four State codes, was accomplished in less than two years. Nearly three years elapsed between the appointment of the other three commissions and the enactment of the codes which they compiled. It must be remembered, however, that none of these men devoted all their time to the work of codification. They were busy men engaged in legal practice or occupied with the duties of public office.

The work of Charles Mason and his associates in drafting the *Code of 1851* may be said to have set a high standard for codification in Iowa. They were not content merely to compile the existing statutes of Iowa. Instead they "fused all the statute law in Iowa into one new law which contained the major part of the previous existing statutes. By such a process the conflicting acts were reconciled, the scattering enactments were welded into one, and the superfluous provisions were weeded out." Moreover, "many parts of the *Code of 1851* were entirely new in their provisions, and were not contained in the preëxisting statutes. Provisions which the commission considered useless, or which could be improved upon, were either dropped or gave place to new or amended acts."¹⁸

Because of the narrow interpretation which the commissioners appointed in 1858 placed upon their powers and duties, the character of their work was inferior to that of their predecessors. The scope of their activities in preparing the first two parts of the *Revision of 1860* may best be indicated in their own words. "This revision which we offer you", they stated in one of their reports

to the legislature, "does not need to be enacted, as it is the law as it exists already. We add nothing to the law — subtract nothing therefrom — make no change of word or phrase — merely of the arrangement of the existing law. We simply put into one chapter what we think belongs to one chapter. We indicate what act and each section thereof, each section comes from — the book where it was formerly found, and when it was passed and took effect."¹⁷ In drafting the remaining parts of the *Revision* they more nearly approached real codification.

Fortunately in the acts providing for the *Code of 1873* and the *Code of 1897* the General Assembly specifically granted to the commissioners broad powers to alter, rewrite, or amend the existing laws as they might deem necessary in order to produce an orderly, harmonious code. Consequently the work of these commissions followed very largely the plan adopted by the men who drafted the *Code of 1851*, and the results were very similar. With each succeeding code the labors of the commissioners were in many respects increasingly onerous on account of the constantly enlarging bulk of legislation and of judicial interpretation and construction.

REPORTS OF THE CODE COMMISSIONS

Each of the four code commissions made a formal report, either to the Governor or to the General Assembly, giving an account of its work and submitting a proposed code for the consideration of the legislature. These reports were printed for the use of the legislators — copies of the first two now being exceedingly scarce.

The first commission made a preliminary report late in 1848, in which an extension of time for the completion of its work was requested. "The revised code is intended

to be a *permanent* work", they reminded the legislators. "All future legislation will have relation to it. If it is made complete and harmonious, but little legislation will be hereafter required on subjects of a general nature. If it is left incomplete and incongruous, it will require repeated amendments and alterations, until we shall no longer have a *Code*."¹⁸ Additional time was allowed the commission, and its final report was presented in December, 1850, when it was ordered printed.

The report of the code commission of 1858, though ordered to be printed in 1858, did not appear until after the Eighth General Assembly had convened in January, 1860. It was printed in two parts entitled, respectively, *The Code of Criminal Practice of the State of Iowa*, and the *Report of the Code Commissioners* — the latter of which contained the practice act. In the preface to the *Revision of 1860* there is a third report which gives a brief account of the labors of the commissioners.

The code commission appointed in 1870 made two reports, one in September, 1871, and the other in January, 1873. The first report contains a *Synopsis* indicating "where the sections of the proposed code may be found in the preceding codes", and a list of all the substantial changes made by the commissioners, with the reasons therefor. Along with the report there was submitted a proposed code which was printed in two volumes — blank pages being bound between the printed pages for the convenience of the legislators. The second report of this commission was a proposed code arranged by titles, "each one of which was printed as a legislative bill ready for enactment by the General Assembly."

The one report made by the code commission which drafted the *Code of 1897* was submitted to the legislature

in 1896. It was a small volume containing an account of the work of the commission and an explanation of the proposed code, which was printed separately. The proposed code, in which each title was printed as a separate bill, made a large volume of over one thousand pages — known as the “Black Code” because of the color of its binding.

ENACTMENT OF THE CODES INTO LAW

Attention has already been called to the fact that *The Old Blue Book* and *The Blue Book* were entirely the products of legislative action, aside from the aid furnished by the Supreme Court judges in the case of the former. *The Blue Book* was compiled by a joint committee which from time to time reported its actions to the Legislative Assembly for approval.

Legislative action on the four State codes, on the other hand, has been confined to laws providing for code commissions, to a consideration of the reports of these commissions, to the final enactment of the proposed codes into law, and to provisions for their editing, publication, and distribution. Taken as a whole the work of the code commissioners has been accepted without extensive or important amendments by the General Assembly. The last two codes have been enacted at special sessions of the legislature held for that particular purpose, and hence have received more careful legislative attention than did the earlier codifications.

The *Code of 1851*, though considered by chapters and sections, was adopted by the General Assembly as a single act with scarcely any variation from the usual process of law-making; and it was approved by the Governor as are other bills which become law. In fact, it appears that the total amount of time spent by the legislature in deliber-

ating upon the provisions of this code was comparatively short, and that few amendments were made by the legislature.

Parts one and two of the *Revision of 1860* consisted simply of "collections of statutes passed at various sessions of the General Assembly", and hence did not require enactment. Parts three and four, containing the civil practice act and the code of criminal procedure, respectively, were enacted bodily and at separate times, after being considered in committee and slightly amended. Again, the legislature as a whole did not give much time to the discussion of the proposed revision.

Both the *Code of 1873* and the *Code of 1897*, however, received detailed legislative consideration at special sessions held for that purpose. In 1872 and again in 1896 the General Assembly in regular session spent much time in deciding upon a method of considering the proposed codes. The result was that very little was accomplished except to demonstrate the fact that the subject of codification was too large to be properly handled along with the routine of ordinary legislation. The extra session of 1873 lasted from January 15th to February 20th, while that of 1897 began on January 19th and continued till May 11th, when an adjournment was taken until July 1st, and on the following day the legislature adjourned *sine die*. At both sessions the members devoted themselves industriously to the work at hand with a painstaking care befitting the importance of the subject. In 1897, particularly, an elaborate plan was followed whereby the various parts and titles of the proposed code were referred to committees, by them considered and in some cases amended, and then submitted as bills for the action of the legislature.

IV

CONTENTS AND CHARACTER OF THE IOWA CODES

THE codes of Iowa have all been concerned with statute laws — that is, with the laws enacted by the General Assembly. Consequently, they contain only a small portion of the law which is in force in the State: the whole body of the Common Law as recognized by court decisions in this State is left untouched.

CONTENTS

The Old Blue Book is in reality only the session laws of the First Legislative Assembly of the Territory of Iowa; and the only reason for including it among the Iowa codes is found in the arrangement and broad scope of its contents. Because it was enacted for a newly established Territory it contains more legislation of a fundamental character than is included in the average volume of session laws. *The Blue Book* of 1842–1843 and a large part of the *Revision of 1860* consist merely of a compilation of all the existing laws of a general nature. The remaining codes, namely those enacted in 1851, 1873, and 1897, constitute real codifications of the statute law of the State, in that wherever necessary the laws passed at previous sessions of the legislature were rewritten, amended, altered, and combined into a logical and harmonious whole.

Various devices have been adopted in the different codes to facilitate their use. *The Old Blue Book* is sup-

plied with marginal notes giving the substance of each section. In *The Blue Book* these marginal notes are omitted, but at the beginning of each chapter there is a brief synopsis which partially answers the same purpose; while in the appendix may be found "Explanations of certain forms made use of in the existing Laws of Iowa." The marginal notes again appear in the *Code of 1851*, in the *Revision of 1860*, and in the *Code of 1873*, but are abandoned once more in the *Code of 1897*.

Beginning with the *Revision of 1860* the source of the various chapters or sections is indicated. In this instance there is a statement at the beginning of each chapter telling when the law was passed, when it went into effect, and the session laws and page where it can be found; or indicating the chapter in the *Code of 1851* from which the provisions are taken. Moreover, after the section numbers, the numbers of the corresponding sections in the *Code of 1851* or in the legislative act are printed in parenthesis. The same result is accomplished in the *Code of 1873* in the marginal notes by means of abbreviated citations to the sources of the various sections; while in the *Code of 1897* this information is placed in brackets at the close of each section. By means of these citations in the latter code one may trace its provisions back as far as the *Code of 1851*, if their original enactment dates back that far.

The *Revision of 1860*, furthermore, contains at the close of each chapter a list of all prior laws on the subject of that chapter passed by the legislatures of the Territories of Michigan and Wisconsin and the Territory and State of Iowa. This code is also annotated with references to the decisions of Iowa courts interpreting or referring to any of its chapters. Neither of these features appear

in the *Code of 1873*, which resembles the *Code of 1851* in being free from extraneous matter. The annotations in the *Code of 1897*, however, occupy practically as much space as the provisions of law themselves; and there is a "Table of Corresponding Sections" by the use of which "it is possible to find the sections containing the same subject-matter in *McClain's Annotated Code* of 1888 and in the session laws of the Twenty-third to Twenty-sixth General Assemblies, inclusive."

Each of the Iowa codes except *The Old Blue Book* included, in addition to the statute laws of Iowa and the various features above indicated, a number of important documents, such as the Declaration of Independence, the Federal Constitution, the Ordinance of 1787, and the Constitution of Iowa. All of the codes are supplied with indexes which are more or less satisfactory, but which would have been much improved by a liberal use of cross-references.

The supplements to the *Code of 1897* contain the laws enacted by the General Assembly between 1897 and the dates of their respective adoption, in 1902, 1907, and 1913. They follow the *Code of 1897* in the matter of annotations and references to sources; and the same system is followed in the *Supplemental Supplement* of 1915, which contains the laws of the Thirty-sixth General Assembly. Along with the *Supplement of 1913* there has been published an index to the *Code*, the *Supplement of 1913*, and the *Supplemental Supplement* of 1915. While this index is commendably exhaustive, containing more than four hundred and seventy pages, its use would have been facilitated by a simpler arrangement. The plan is complicated, with sub-heads and sub-sub-heads, so that unless a person is of an analytical turn of mind and is extremely

well acquainted with the form and content of the laws he will not always find the ready guidance which an index should furnish.

ARRANGEMENT

The arrangement of the law as found in the Iowa codes has not been altered materially since the adoption of the *Code of 1851*. The so-called Territorial codes, however, had a system all their own, which fortunately did not set the standard for later compilations. Both in *The Old Blue Book* and in *The Blue Book* the laws are arranged alphabetically by chapter headings. Since these headings were given to the chapters arbitrarily they were often misleading and the results were far from satisfactory and sometimes almost ludicrous.

Beginning with the *Code of 1851* the contents of all the codes adopted since the admission of Iowa into the Union have been divided into parts, titles, chapters, and sections. In each code there are four parts, the character of which has remained unchanged from 1851 to the present time. Part one is devoted to public law, part two to private law, part three to the code of civil practice, and part four to the code of criminal procedure. The parts are divided into titles which are made up of one or more chapters; and the chapters, in turn, are divided into sections. Two deviations from this rule are to be found in the *Revision of 1860*, part three of which is not divided into titles, although in the numbering an allowance is made for five titles in this part. Furthermore, a number of chapters in the *Revision of 1860* are first divided into articles and afterward into sections.

In the *Code of 1851* and the *Revision of 1860* the chapters are numbered consecutively straight through the volume; in the *Code of 1873* and the *Code of 1897* the

chapters of each title are numbered separately. In all the codes the sections are numbered straight through. Some indication of the growth in the bulk of what may be called the permanent statute law is to be derived from a comparison of the number of chapters and sections in the different codes. The *Code of 1851* contains 209 chapters and 3367 sections; the *Code of 1873* is made up of 239 chapters and 4806 sections; and the *Code of 1897* is classified into 279 chapters and 5718 sections.

The supplements of 1902, 1907, and 1913, and the *Supplemental Supplement* of 1915 follow the *Code of 1897* in arrangement. The legislation enacted since 1897 is included in sub-chapters and sub-sections, designated by the letters a, b, c, etc., under already existing chapters and sections. So that while the total number of chapters and sections remains the same as in the *Code of 1897* the content of many of the chapters and sections has been greatly expanded.

FORM AND LANGUAGE

While the Iowa codes no doubt fail in many respects to measure up to all the canons of excellence in form and language which have been adduced in the hope of improving the character of statute law, they more nearly approach those standards than does the great mass of the statutes as originally enacted. (See Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume.) This is especially true of the *Code of 1851*, the *Code of 1873*, and the *Code of 1897*. One has only to read the reports of the commissioners who prepared these codes to appreciate the fact that they made many changes in the language of the laws for the purpose of removing repetitions, discrepancies, ambiguities, and all

unnecessary words and phrases. The result is a statement of the law which is clearer, simpler, more concise, and less encumbered with formal, legal verbiage — a statement, in other words, that is more easily understood by the ordinary citizen.

The Territorial codes possessed no special merit in this regard, although *The Old Blue Book* was in many ways superior to its successor. On account of the narrow interpretation which they placed on their powers the commissioners who drafted the *Revision of 1860* failed to make any important changes in the language of the laws which they embodied in the first two parts. An excellent illustration of the effect is to be found in chapter twenty-two dealing with the county judge — a chapter which is very confusing.

A few illustrations will serve to indicate some of the ways in which the drafters of the codes of 1851, 1873, and 1897, improved the form and language of the laws. *The Old Blue Book* contains a statement, which in slightly altered form is repeated in every code down to the present time, to the effect that “words indicative of the masculine gender shall be deemed to include the feminine, and the singular number shall be deemed to include the plural, wherever the circumstances of the case will permit.”¹⁹ Legislators from that day to this have ignored this rule, and any number of laws are burdened with such expressions as “he or she”, “his or her”, “person or persons”, and “owner or owners”; when “he”, “she”, “person”, and “owner” would cover the whole ground. In the codes, on the other hand, this rule has been followed with comparatively few exceptions.

Another improvement in the language of the laws is indicated in the report of the commissioners who drafted

the *Code of 1873*, when they stated that they had "taken occasion to remove all foreign words and phrases from the laws, and to make the statute-book speak plain English throughout, even when a few more letters were required."²⁰

Again, in the codes, wherever possible, the original laws have been condensed by rearrangement and the omission of unnecessary phrases and repetitions. An instance chosen at random is to be found in Section 4600 of the *Code of 1897*—a section of approximately two hundred and fifty words specifying the methods in which justices of the peace and constables shall account for fees. This section is a condensation of a law of the Twenty-fifth General Assembly containing about four hundred and twenty words in three sections, in addition to the repealing and publication sections. Furthermore, the codes naturally do not contain "blind amendments", such as the following: "That section 1, chapter 85, acts of the Twenty-second General Assembly be hereby amended in the seventh line thereof by inserting the words 'of naturalized citizens and,' after the word 'heirs' and before the 'of' "²¹

Without seeking additional illustrations, it may be said in conclusion that if the statute laws of Iowa all measured up to the codes in point of form and language, they would more nearly approach the standards demanded in scientific law-making.

NOTES AND REFERENCES

¹ Quoted in Clarke's *The Science of Law and Lawmaking*, p. 97. See also Dillon's *The Laws and Jurisprudence of England and America*, p. 256.

² McClain's *The Iowa Codes* in the *Iowa Law Bulletin*, Vol. I, No. 1, p. 27.

³ Mr. Powell's articles on the *History of the Codes of Iowa Law* appear in *The Iowa Journal of History and Politics*, Vol. IX, pp. 493-527, Vol. X, pp. 3-69, 311-362, Vol. XI, pp. 166-220, 364-443, Vol. XII, pp. 17-33.

⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 89.

⁵ *Laws of Iowa*, 1838-1839, p. 517; Powell's *History of the Codes of Iowa Law* in *The Iowa Journal of History and Politics*, Vol. IX, p. 500.

⁶ *Laws of Iowa*, 1848 (extra session), pp. 42-44.

⁷ Powell's *History of the Codes of Iowa Law* in *The Iowa Journal of History and Politics*, Vol. X, pp. 43, 44, 69.

⁸ *Laws of Iowa*, 1858, pp. 47, 48.

⁹ *Laws of Iowa*, 1858, pp. 122-125.

¹⁰ *Laws of Iowa*, 1870, pp. 75, 76.

¹¹ McClain's *The Iowa Codes* in the *Iowa Law Bulletin*, Vol. I, No. 1, p. 24; Powell's *History of the Codes of Iowa Law* in *The Iowa Journal of History and Politics*, Vol. XI, p. 220.

¹² *Laws of Iowa*, 1894, p. 112.

¹³ McClain's *The Iowa Codes* in the *Iowa Law Bulletin*, Vol. I, No. 1, p. 26.

¹⁴ *The Iowa Journal of History and Politics*, Vol. I, p. 119.

¹⁵ *Supplemental Supplement to the Code of Iowa*, 1915, p. xi. See also p. 17, Sec. 224-i. The last sentence of this section reads as follows: "The supplement first following the thirty-seventh general assembly, and all subsequent supplements, shall be so prepared as to supplant the supplement last preceding."

¹⁶ Powell's *History of the Codes of Iowa Law* in *The Iowa Journal of History and Politics*, Vol. X, pp. 41, 42.

¹⁷ *Revision of 1860*, Preface, p. v.

¹⁸ *House Journal*, 1848-1849, pp. 23, 24.

¹⁹ *Laws of Iowa*, 1838-1839, pp. 73, 74.

²⁰ *Report of the Commissioners to Revise the Statutes*, 1871, pp. 11, 12.

²¹ *Laws of Iowa*, 1894, p. 86.

**INTERPRETATION AND CONSTRUCTION OF
STATUTES IN IOWA
BY
O. K. PATTON**

I

INTRODUCTION

UNDER the American system of State government it is the function of the legislature to declare what the law shall be and for the courts to declare what it is. The law-making body determines what the law shall be at the time of enactment: the judiciary determines what the law is when application is made to some particular case. As the legislative department has developed a body of rules to govern its procedure in declaring what the law shall be, so the judicial department has developed a body of rules which govern its action in declaring what the law is — namely, rules of interpretation and construction. (See the writer's paper on *Methods of Statute Law-making* in this volume, pp. 170, 171.)

To be sure the legislature has to a limited extent prescribed rules for the interpretation and construction of its enactments; but these statutory regulations are for the most part simply codifications of the rules developed by the courts themselves and therefore add little to the body of fundamental principles employed by the judiciary in the application of statutes to particular cases.

The primary reasons for the development of the rules of construction and interpretation are the deficiencies of human language. A statute expressed in the best possible language would still meet with some difficulties in its practical application — questions of meaning in some unforeseen cases would necessarily arise in its administration. No one can completely convey his ideas to an-

other either by written or spoken language — some of the finer shades of meaning are lost in every attempt to communicate thought.

Much of the criticism of modern legislation and legislative methods fails to take into account the difficult task set for a legislative assembly. The principal purpose of statute law-making is to adapt the political, economic, and social institutions of the State to the changing conditions of the time. In fulfilling this purpose the legislature finds difficulty not only in determining policies, but also in attempting to give actual expression to the legislative will after some action has been determined upon. The legislature is expected to maintain accuracy, precision, and consistency in the language of its enactments; but it is not easy to maintain standards when every measure is subject to alteration and modification in the course of its passage.

The present-day system of enacting statutes seeks to bestow upon every measure during the period of its consideration all the creative brain-power available in the legislative halls. This encourages the presentation of opposing views and results in the conflict of ideas. Finally, the legislature is expected to incorporate the composite judgment of fifty or a hundred men into a statute which will be harmonious in its subject-matter and concise and coherent in its expression.

The problem is a serious one. No country has ever completely solved it. Perhaps many of the defects in modern legislation and legislative methods are inherent in any system of law-making by a representative assembly. At least no one can question the statement that "much modern legislation is crude, hasty, unwise. Much of it proceeds from an imperfect conception of what is

needed and what is practicable." Be this as it may, citizens, law-makers, and public officials are all working to eliminate as many of these defects as possible and to reduce to a minimum those which can not be eliminated altogether. One of the ways in which some of the defects in expression can be minimized is for draftsmen and legislators to take into consideration the general rules of construction and interpretation by which the courts are guided in applying their statutes to individual cases.

A great deal has been written on the interpretation and construction of statutes; but much of this literature is not especially helpful to the draftsman or legislator in forming a general conception of the rules used by the courts in interpreting and construing statutes. Books and treatises like Beal's *Cardinal Rules of Legal Interpretation*, Maxwell's *On the Interpretation of Statutes*, Lewis's *Sutherland Statutory Construction*, and Black's *Handbook on the Construction and Interpretation of Laws* — although of great value to the courts and lawyers because they are primarily concerned with particular civil disputes, commercial transactions, the disposition of property and criminal cases — are, for the most part, too bulky and detailed in their treatment to give the law-maker a general understanding of the principal rules of interpretation and construction.

This paper will attempt to present in a brief and general way some of the principal rules of interpretation and construction which, it is believed, ought to be known by draftsmen and which, it is hoped, will be of practical value to members of the General Assembly. A glance at the notes and references at the close of the paper will disclose the fact that this discussion is based almost exclusively upon the statutes and court decisions of the State of Iowa.

II

GENERAL PRINCIPLES OF INTERPRETATION AND CONSTRUCTION

INTERPRETATION has been defined as the "art of finding out the true sense of any form of words": construction has been said to be "the drawing of conclusions, respecting subjects that lie beyond the direct expressions of the text, from elements known from and given in the text".¹ This nicety of distinction, however, has not been followed by the courts, and text-writers often use the two terms interchangeably. Since in the application of a particular statute it may be necessary to resort to construction as well as interpretation, no technical distinction will be made between the two terms in this paper.

SCOPE AND PURPOSE OF INTERPRETATION AND CONSTRUCTION

The sole purpose of every interpretation or construction of a statute is to determine the meaning and intention of the legislature, to the end that the legislative will may be carried into effect. This point was made clear by the Supreme Court of Iowa as early as 1848, when Justice Greene said in the case of *Noble v. The State*: "The intention of the legislature is the leading, and indeed the only object to be inquired into by a court in construing legislative enactments".²

But the Supreme Court will presume that when the General Assembly has embodied its legislative will in a statute the instruments used for expressing its will are adequate for the purpose and actually do express the

action intended by the legislature. Hence, if the "statute is clear, plain, and unambiguous, there is no room for construction."³

In case, however, the language of a statute is not clear and conveys no meaning, or an absurd meaning, or is susceptible of more than one interpretation, then the court is at liberty to go beyond the bare language of the statute and seek other evidences of the legislative intent. Thus the court will consider the spirit and reason of the law, the scope and purpose of the act, the legislation existing at the time, the evil that was intended to be corrected, and the remedy the legislature attempted to apply.⁴ If these evidences fail to satisfy the court as to the legislative intent then it is proper to consider the circumstances attending the passage of the act, the sense in which the law was understood by contemporaries, and its relation to other acts and laws.⁵ If after consulting all of these evidences the court is still uncertain as to the meaning of the act it will give some weight to the "general considerations of public policy" which it may be presumed "the legislature had in mind",⁶ and it will give the statute in the end a construction "which most nearly conforms to reason and justice."⁷

The courts can not, however, under the guise of interpretation or construction enact law. It is not for the courts to pass upon the wisdom or policy of the law: it is their function to carry out the intent of the law-makers — to apply the law, not modify or alter it.

In applying the law to individual cases the judiciary will determine whether the act is public or private in its character, whether it has a general or local application, and whether it is constitutional or unconstitutional. In so doing the courts sometimes go a long way in giving

character to legislative utterances. It is some of these decisions that have been termed "judge-made law". Nevertheless, a court exceeds its proper function when it does more than expound and apply the law to a particular case presented to it for adjudication.⁸

MEANING OF LANGUAGE

It is a well established rule in this and other jurisdictions that the first and most direct means in arriving at the legislative intent is in the application of the language used in the statute.⁹ In applying the language of a statute it will first be considered in its natural and ordinary significance — in the sense given to it by those who use it correctly. This is the rule of interpretation which is provided by the *Code of 1897*. Moreover, the legislature has also defined certain words and phrases, and these legal meanings are presumed to be binding upon the courts and the legislature. And yet, the construction statute provides that such interpretation need not be applied by the courts when it "would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute".¹⁰

When no obscurity or ambiguity results from taking the language of an act in its ordinary or legally defined meaning there is neither occasion nor justification for construction on the part of the judiciary. In such cases the law will be enforced and applied exactly as it is found in the statute book. On the other hand, if this literal interpretation of the language of the enactment will result in a contradiction of the apparent purpose of the law, or if it is clear from a consideration of the whole statute, or similar legislation upon the same subject, that the law-makers intended something different from the literal

meaning of the words, the courts will enforce the manifest intent of the General Assembly and not the language of the statute.¹¹ Thus, as was stated by Justice Beck in 1882, "it is frequently the duty of courts to restrain, or qualify, or enlarge the ordinary meaning of words, in order to carry into effect the intention of the statute".¹²

Therefore, it is evident that the language of a proposed law should be well selected by the draftsman. Indeed, although defective and inaccurate language may not obscure the meaning beyond rescue by the courts, the careful legislator will see that his bill is in the best possible language before he introduces it. He must also be sure that the words selected express his intention; for if they are clear and fail to express his intention the purpose of his act will not be accomplished, according to the rules of interpretation and construction. For this reason some of the principal rules for interpreting and construing language may now be considered.

Grammar and Punctuation.—The ordinary rules of grammar will always be applied by the Supreme Court in ascertaining the meaning of the legislature; but they are only rules of interpretation and construction, and if by their use the legislative intent will not be carried out the grammatical sense will then be modified, extended, or abridged. So punctuation, quotation marks, and brackets, if of any significance, will be considered by the judiciary merely as aids in construction: they will never control when they change the legislative intent, and they will always be "the last resort" in construing and interpreting the language of a statute.¹³

Errors, Omissions, and Ambiguities.— Verbal inaccuracy or clerical errors will be corrected by the courts in order to give effect to the legislative intent, but it is not within the province of the courts “by interpretation and construction to supply an omission, any more than it is to declare the law otherwise” than found by them. For example, chapter 136 of part three of the *Code of 1851* provided for the compensation of officers. Section 4187 of the *Revision of 1860* repealed all portions of part three of the *Code of 1851* which were not literally or numerically designated in the *Revision of 1860*. No portion of chapter 136 of the *Code of 1851* was designated in the *Revision of 1860* as it passed the legislature, although the report of the code commissioners did contain substantially the provisions of the same chapter. The legislature, however, struck out or omitted this chapter during the consideration of the proposed revision. Thus, the General Assembly while intending to enact a substitute for this chapter omitted entirely to make provision for costs and fees as covered in chapter 136 of part three of the *Code of 1851*. Later Justice Wright said that under these circumstances the court had no power to supply the omission.¹⁴

When, however, the literal language of a statute contains conflicting and doubtful provisions the court will adopt that construction which will support the act in all its parts: it will not discard one of the parts because of ambiguity, unless it is incapable of enforcement. The same is true of inconsistent acts of different dates, since repeals by implication are not favored by the courts.¹⁵ (For a discussion of the repeal by implication see Mr. Van der Zee’s paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 340, 341.)

General and Specific Words.—General words and terms will be given their full and complete meaning, that is, “their natural, plain and ordinary signification.”¹⁶ But when general words follow an enumeration of a particular class of persons or things, the general words will be interpreted as applying only to persons or things of the same general character or class as those enumerated.¹⁷ For example, the Supreme Court in construing the language, “express company, railway company, or any agent or person in the employ of any express company, or any common carrier, or any person in the employ of any common carrier, or if any other person”, contained in one of the laws regulating the liquor traffic in Iowa, said that the words “any other person” did not enlarge the enumerated classes, but meant persons of like kind or in like employment with those specified.¹⁸ This is the doctrine of *ejusdem generis*. It will be resorted to in construing a statute only as an aid in ascertaining the legislative intent, and it will not be invoked when the courts think its application will result in rendering some words meaningless which but for its operation might be accorded some significance.¹⁹

When, however, general words do not follow an enumeration of persons or things of the same nature or class, they will not be limited in their meaning by the judiciary. For example, in interpreting one of the safety appliance laws of the State, the language, “all saws, planers, cogs, gearing, belting, shafting, set screws and machinery of every description”, was said to add other classes than those enumerated by the general words “machinery of every description”.²⁰ So the rule might be stated thus: when general words, like “other” and “any other”, follow an enumeration of specific groups of persons or

classes of things, they mean persons or things belonging to the same groups or classes, but when they do not follow such an enumeration of specific groups or classes they will be given their full and ordinary meaning by the courts.

Express Mention and Implied Exclusion.—When a statute specifies the subjects upon which it is to operate or the method of performing certain acts it will be interpreted as excluding from its operation all subjects not mentioned and as prohibiting all methods of action not provided. Thus, “affirmative words may, and often do, imply a negative of what is not affirmed, as strongly as if expressed”.²¹ This is the doctrine of *expressio unius est exclusio alterius*. The courts will not, however, allow it to override the manifest intent of the General Assembly.

Conjunctive and Disjunctive Words.—Courts will interpret “and” as a disjunctive and “or” as a conjunctive “when the sense absolutely requires it.”²² This rule is based upon the assumption that the General Assembly did not intend to enact an absurd or unreasonable law. Thus, when a literal construction of the statute will defeat the very purpose of the enactment, the conjunctive particle will be interpreted as disjunctive or *vice versa*, on the theory that the word was inserted as a clerical error.²³

Number and Gender.—It is a well settled rule in this State that, if necessary to carry out the legislative intent, the courts will interpret words and phrases used in the plural to include the singular and singular words to include the plural. They will also construe words of the

masculine gender to include the feminine gender. Instances of the application of the first rule are numerous among the adjudicated cases in this State. For example, the word "districts" in division three of section 1005 of the *Code of 1897* has been construed by the Supreme Court to mean district or districts, as the case may be, in order to give full effect to section 794 of the Code. These sections of the *Code of 1897* have to do with the power of a city to divide the municipality into sewerage districts. Without the application of this first rule of interpretation these sections would be limited in their scope. The Supreme Court has not been called upon so often to apply the second rule. The use of these rules, however, is almost indispensable in the administration of many statutes: they have been specifically provided for in this State by legislative enactment.²⁴ (See Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 353, 354.)

Technical and Popular Meaning of Words and Phrases.—The *Code of 1897* provides that "words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning."²⁵ This is but a codification of the general rules of interpretation and construction as followed by both English and American courts.

According to the Common Law rules of construction, words having an appropriate meaning in law will be construed in accordance with that meaning. The courts will presume that "the Legislature intended to use the terms

employed in the statute with accuracy and definiteness, and not with indefiniteness and uncertainty.”²⁶ Thus commercial and trade terms and terms of art and science will be presumed to have been used in their accepted meaning.²⁷ For example, the Supreme Court of Iowa has decided that the word “ship” as used in the statute forbidding the shipment of fish and game out of the State means “ship” in its ordinary sense as defined by the lexicographers. On the other hand, it has been held by the court that the term “manslaughter” as used in the criminal code means “manslaughter” as known to the Common Law; that is, as defined by courts of Common Law jurisdiction; while the phrase “Welsbach hydrocarbon incandescent lamp” means, in the law regulating the sale of petroleum products, the lamp known by that technical name to the commercial world and not one similarly constructed.²⁸ Moreover, the preceding rule will be applied although popular words may have a technical meaning and technical words a popular meaning.

In Iowa certain words have been defined by the Code in their legal sense or in the sense in which they are to be understood by the courts in construing and interpreting statutes. In addition to these statutory definitions the Supreme Court in the long list of cases that have been adjudicated in this State has given certain definitions to words and phrases. Legislators and draftsmen are supposed to know of these interpretations and to use the words involved in their technical and defined sense. The statutory definitions may be found in section 48 of the *Code of 1897*; while many of the judicial definitions may be found in McClain’s *New Iowa Digest*, Vol. IV, pp. 4075–4088, and in Callaghan’s *Iowa Digest*, Vol. II, pp. 1803–1830 — the two works should be used together as

Callaghan's is supplementary to McClain's. Furthermore, besides the standard dictionaries to which the courts constantly refer, legislators and draftsmen will find some use for Ebersole's *Encyclopedia of Iowa Law* which contains "a list of nearly 1600 legal terms and phrases, with definitions and comments from an Iowa standpoint." (For the use of definitions in statutes see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 358-363.)

INTRINSIC AIDS IN INTERPRETATION AND CONSTRUCTION

In addition to the bare language of a statute and the rules which have been evolved for interpreting that language the courts have other aids which they will often use to ascertain the legislative intent. These agencies are known to the judiciary as intrinsic aids in interpretation and construction — meaning aids which are found within the statute, itself, but which consist of something more than its mere words, namely, the context, the preamble, the title, and the interpretation clause. The intrinsic aids to interpretation and construction become of great importance when the literal interpretation of the language makes doubtful the legislative intent.

The Whole Statute and the Context.— One of the first rules of interpretation and construction which the courts will apply to a statute which is not clear is the rule which permits them to view every clause and section in the light of the whole statute and its context.²⁹ The rule has been stated by the Supreme Court in these words: "One of the cardinal rules for the construction of statutes is to search out the intent of the legislature, and adopt the sense which will be in harmony with the statute as a whole."³⁰

In applying this rule of interpretation by context it has been held by the Supreme Court that the *Code of 1897* will be interpreted and construed as one act, although each title was enacted separately. Thus when amendments or alterations are proposed to any section of the Code they will affect all of the law upon the subject.³¹ It must not be understood, however, that the courts will go beyond the particular section of the Code, or of an act of the General Assembly, "if the meaning of the words can be found in the section itself".³² Moreover, the courts will always attempt to give effect to every word, clause, sentence, and section of a law. In every case they will try to so reconcile the different provisions of a statute as to make the whole act harmonious and consistent throughout.³³ And in such construction general provisions will be subordinated to specific provisions, that is, when specific and general terms are employed in the same connection the general terms will be said to take their meaning from the specific terms.³⁴

Preambles.— Another intrinsic aid sometimes relied upon by the courts is the preamble of an act. Although technically the preamble is no part of the statute, when the body of the act is obscure or ambiguous, the court may consult the preamble with a view to obtaining light upon the legislative intent. But "where the enacting clause is clear and unambiguous, there is no occasion to resort to the preamble" for the purpose of construction.³⁵ Moreover, the preamble will not be interpreted as restraining the effect of an enactment, although it may be held to extend it.³⁶ The use of the preamble, however, is not an important aid in the construction of statutes in Iowa since its use is confined largely to private or special acts. (For

a discussion of the use of the preamble in Iowa see the writer's paper on the *Methods of Statute Law-making in Iowa* in this volume, pp. 199, 200; and Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 320-326.)

Titles.—It is generally said that the title of an act, like the preamble, is legally no part of the statute; and yet, it is a general rule in some jurisdictions that under some circumstances the title may be consulted by the courts as an intrinsic aid in construction to the same extent as the preamble. Moreover, it would seem that in Iowa considerable weight might be attached to the title in cases of doubt, since it is required by the Constitution of the State as a part of every valid enactment—the rule being that the enacting part of a statute can have no effect beyond the object expressed in the title. Nevertheless, the Supreme Court has decided that the language of an act can not be limited or extended by the use of the title.³⁷ (For a discussion of the character of titles in Iowa see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 305-320.)

Interpretation Clauses.—Sometimes a statute contains an interpretation clause or section defining the meaning to be attached to certain words and phrases occurring frequently in the other sections or parts of the act. For example, the negotiable instrument law of 1902, the warehouse receipts act of 1907, the uniform bills of lading act of 1911, and the employers' liability and workmen's compensation law of 1913, all contain interpretation sections. Such clauses are binding upon the courts and will be consulted by the courts as valuable intrinsic

aids in construing and interpreting long acts.³⁸ (For a further discussion of the use of interpretation clauses in Iowa see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 358-362.)

EXTRINSIC AIDS IN INTERPRETATION AND CONSTRUCTION

In addition to the language of a statute and the intrinsic aids to construction the courts have still another set of agencies to aid them in difficult and extreme cases, namely, the extrinsic aids in interpretation and construction — that is, the aids which are found outside of the statute. It must be remembered, however, that a statute itself is the best means for determining the intended legislative action; and when the sense of the language in every section is clear or the legislative intent is apparent from a consideration of the whole statute with all its parts, there is no need for extrinsic aids and the courts will not resort to them. On the other hand, if doubt remains after a careful consideration of the act itself, reference may then be had to such extrinsic matters as the contemporaneous circumstances of the passage of the act, the history of the enactment of the legislation, the journals of the legislature, legislative interpretation and construction, or general interpretation statutes.

All of these extrinsic aids will not, however, be given equal weight and the courts will proceed cautiously when considering matters outside of the statute. In fact, they seem to apply the same rule in construing an act of the General Assembly as they would in construing a written instrument, namely, the parole evidence rule. According to the parole evidence rule when a written instrument is "complete, unambiguous, and intelligible" resort can not be had to other evidence to show what transpired, to alter,

add to, vary, or contradict the terms expressed. This rule really makes the written instrument itself the best evidence of its legal effect; and the same is true of statutes. For this reason parole evidence or extrinsic aids are not favored to any great extent by the Supreme Court of Iowa. The court has undoubtedly found it difficult to get away from the analogy of the construction of written instruments. At the same time, since some use has been made of the extrinsic aids in interpretation and construction, they will be briefly considered.

Contemporaneous Circumstances.—Among the extrinsic aids, which are most frequently used to help remove ambiguity and doubt in a statute, are the circumstances existing at the time of enactment. These consist of the law existing before the present act, the mischief for which it failed to provide, the nature of the remedy proposed, and the real reason of the remedy. Moreover, the court will take into consideration the prior judicial decisions involving the subject-matter of the act, and they will be given special consideration if it appears that the law was based upon them or was the result of their holdings.³⁹

History of the Legislation.—Another extrinsic aid closely allied to the contemporaneous circumstances connected with the enactment of a statute is the history of the legislation. Great weight will sometimes be given to the meaning derived by the courts from a consideration of the development of the whole law upon the subject to which the act applies. For example, in the case of the *Des Moines Railway Company v. City of Des Moines*,

152 Iowa 18, in which a doubtful statute was at issue, the court went into a consideration of the complete history of the legislation involved, tracing it from the earliest beginnings in this State down through the various codes of Iowa law to the time of the case in question. Indeed, the evolution of an act is perhaps as strong extrinsic evidence as can be obtained in ascertaining the legislative intent; and it is worthy of note in this connection that the Supreme Court of Iowa appears to have been particularly impressed with the importance of such evidence in the case just cited.

Journals of the Legislature.—Still other closely allied extrinsic aids in the interpretation and construction of statutes are the journals of the legislature. These aids, however, have not been given so much consideration in Iowa as have the contemporaneous circumstances connected with the passage of the act and the history of the legislation involved. Nevertheless, it has been generally held in this country that although the enrolled bill, as authenticated by the signatures of the presiding officers in the two houses of the legislature and filed with the Secretary of State, is conclusive as to what was enacted into law, the courts will, when necessary, go behind the enrolled bill for the purpose of ascertaining the legislative intent. In such instances they may and often do resort to the journals of the two branches of the legislature to determine the purpose of the law by considering the history of the passage of the act from its first introduction as a bill until its final adoption and approval.

There is no doubt in this State but that the enrolled bill is considered as conclusive proof by the Supreme Court of what language was actually incorporated into

the legislative enactment.⁴⁰ The only question is whether under any circumstances whatever the court will go behind the enrolled bill to determine in cases of ambiguity what the General Assembly actually meant by the language of the enrolled bill. Upon this point it can not be said that the Supreme Court has made itself altogether clear.

In six different cases decided by the Supreme Court of Iowa the rule that the enrolled act is the best authority of the legislative enactment has been laid down. But in two of those cases the intimation is made that the court will never go behind the enrolled act, not even for the purpose of construing and interpreting what has been enrolled. In the case of *Duncombe v. Prindle* the court said in speaking of the enrolled bill: "Behind this it is impossible for any court to go for the purpose of ascertaining what the law is."⁴¹ In the case of *Miller v. City of Oelwein*, decided in June, 1912, the court said: "The enrolled bills duly signed and deposited with the Secretary of State constitute the ultimate proof of their regular enactment and behind them it is impossible for any court to go for the purpose of ascertaining what the law is."⁴² In all of these cases, however, the question before the court was what had been enacted, that is, what words had been incorporated into the law. All the court really decided was that it would not go behind the enrolled act to ascertain if it had passed through every step ordinarily required by the legislature, but it would take the enrolled bill as conclusive proof that all the legal requirements had been complied with.

In the case of *Conly v. Dilley*, decided in January, 1912, just six months before the case of *Miller v. City of Oelwein*, Justice Weaver said: "In the first place, it is

extremely doubtful if the courts can properly go behind the enrolled bill to scrutinize the details of its legislative history for grounds upon which to hold it invalid. It may be that if the record affirmatively disclosed the adoption of an amendment which does not appear in the enrolled bill, or that such bill did not receive a constitutional majority of either House, or other vital defect of that nature, the court would not be bound to accept the enrollment and publication of an alleged statute as a finality".

This language is especially interesting in connection with the language used by the court in the case of *Des Moines Railway Co. v. City of Des Moines*, decided in May, 1911, about six months before the case of *Conly v. Dilley*, when Justice Deemer said, after quoting at length the statement of the code commissioners as to their intention in drafting the section of the Code under consideration: "Legislative history should always be regarded in arriving at a proper interpretation of any given statute."⁴³ In this same connection he also said that the construction here given "may perhaps be a little forced, but it is confirmed somewhat" by another provision, and finally when "looking to the legislative history of this act, to the report of the Code Commission, to the language used, and remembering the fundamental canon of construction that all parts of it should be permitted to stand and be given effect" it seems but proper to give effect to the legislative intent so manifested.⁴⁴

Again, a prior case, decided in 1883 and involving the validity of the prohibition amendment, laid down a much broader rule by way of dictum. In that case the Supreme Court held that the amendment had not passed two successive legislatures in exactly the same form and was therefore invalid.⁴⁵ It arrived at this conclusion by con-

sulting the journals of the two sessions of the legislature which proposed the amendment. This was done in the face of the objection "that the enrolled resolution, signed by the Speaker of the House and President of the Senate, and approved by the Governor" was conclusive evidence "that the resolution as enrolled was agreed to by both houses".⁴⁶ The interesting thing about this action of the Supreme Court in ignoring the objection made to going back of the enrolled resolution to find out what was actually proposed in the amendment, that is, what was the actual language adopted in the proposed amendment, is that the court drew an analogy to statutory law and cited Cooley's *Constitutional Limitations* for the following statement of the authority of the court to go behind the enrolled act:

Each House keeps a journal of its proceedings, which is a public record, and of which courts are at liberty to take judicial notice. If it should appear from these journals that any act did not receive the requisite majority, or that in respect to it the legislature did not follow any requirement of the Constitution or that in any other respect the act was not constitutionally adopted, the courts may act upon this evidence, and adjudge the statute void.⁴⁷

After satisfying itself that, at least as to statutory law this was the rule, namely, that the court could go behind the enrolled bill to see if the necessary steps had been taken to make the enactment valid, the Supreme Court concluded that it had the same authority in connection with constitutional amendments. And so it proceeded to disregard the joint resolution as enrolled and to consult the resolution as entered upon the journals of the two houses, laying down the rule that the journals were higher authority as to the language of the proposed amendment than the enrolled resolution.⁴⁸

The court really based its decision in this case upon the ground that the Constitution had made the journals of the General Assembly the primary evidence of the contents of the resolution proposing an amendment, and that there was a distinction between statutory law and constitutional amendments in this respect since the Constitution only requires every bill to be signed by the presiding officers and the Governor, while it requires a resolution proposing a constitutional amendment to be spread upon the journals of the legislature. Thus the enrolled bill is the ultimate and conclusive proof of the contents of the law and the journals of the legislature are the conclusive proof of the contents of the proposed amendment.

In the course of its decision, however, the court reviewed the two lines of authority upon the proposition of going behind the enrolled bill and then considered the following sections of the Code:

The secretary of the senate and clerk of the house of representatives shall preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of the legislature. The secretary of state shall cause the same to be bound and preserved as the original journals of the senate and the house.⁴⁹

The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had, or by a copy purporting to have been printed by its order.⁵⁰

After discussing these sections in connection with the

subject under consideration the court came to the following conclusions:

Without doubt, the journals, under the foregoing statutes, are competent evidence to establish the proceedings of either or both houses of the General Assembly. The important, if not the only legitimate, business of the General Assembly is legislation; that is, the enactment of laws or statutes. The proceedings of the General Assembly, therefore, include the manner and form in which the laws are enacted. The journals, therefore, are competent evidence of such facts. If it becomes necessary, the design of the statute evidently is that the journals may be introduced and become competent evidence in the courts. The provision is, the proceedings are proved by the journals. For this purpose the journals are competent evidence in all courts and places, and for all purposes — for there is no exception.⁵¹

Only three years after rendering this decision the Supreme Court decided that the failure of the House journal to show that a bill had passed the House was not sufficient evidence to overcome the presumptive evidence of the enrolled act that the bill had been enacted into law.⁵²

From these decisions then it appears “extremely doubtful” if the courts will use the legislative journals as extrinsic aids in interpretation and construction of statutes in this jurisdiction. There is no reason to presume, however, that the Supreme Court will not in the future, when the proper case is presented to it, lay down the general rule, already established in this country, which permits the courts to use the journals of the law-making body to ascertain the meaning intended by the legislature if the language of the enrolled act is ambiguous or doubtful in itself.

Opinions and Motives of Legislators.— Upon the same theory that the legislative journals are excluded in some of the States, the opinions and motives of individual legislators are now generally excluded throughout the United States in the interpretation and construction of statutes. It is well settled by the decisions in this State that the opinions of members of the legislature as to the effect and meaning of the law at the time of enactment can not be consulted by the courts. They must resort to other extrinsic aids when the statute is ambiguous.⁵³ The same has usually been said of the motives of individual legislators, namely, that the courts will give no consideration to what a legislator or group of legislators intended to do. The courts are concerned only with what the legislature as a whole actually did by adopting the language found in the enrolled act. In one case which is cited above the court gave considerable weight to the intent of draftsmen as manifested by the report of the code commissioners who drew the law in question.⁵⁴ As this case was only decided in 1911 it may be possible that the courts will give more attention to motives as an extrinsic aid in the future, especially when the motive is found in some official report like the report of the code commissioners. In an earlier case, however, the Supreme Court refused to give any weight to a statement made by a committee of the legislature as to the purpose of the act.⁵⁵

Legislative Interpretation.— Although legislative interpretations are not binding upon the judiciary, it would seem to be logical that, if the opinions and motives of legislators will not be considered by the courts, the legislature as a whole might express its opinion as to what was intended by a particular act. It is well settled, how-

ever, that the General Assembly can not interpret or construe its own enactment—that is the function of the judiciary. The only way the legislature can explain its prior action by subsequent action is by amendments to the former law. Nevertheless, the Supreme Court of this State will give some weight to the legislative interpretation of a prior act expressed in a subsequent law. In other words, when the court finds that one legislature has acted upon some prior law it will give some consideration to the construction thus placed upon the former act. Moreover, the enactment of a law, even in the form of an amendment to an earlier statute will not be held by the courts to necessarily change the old statute: it may be held by them to be a mere affirmance of the existing law.⁵⁶

INTERPRETATION STATUTES

In addition to the extrinsic aids of interpretation and construction there are certain other aids which will be considered by the courts. Some of these aids are found in interpretation statutes. Practically every State in the American Union has a general interpretation statute. In Iowa such a statute appears as section 48 of the *Code of 1897*. Certain parts of this section have already been considered in connection with the discussion of other subjects in this paper. Some of the provisions of the interpretation law, however, pertain to subjects not discussed elsewhere in this paper and for that reason have not been presented. These will now be considered. The courts will resort freely to some of these provisions for guidance, although the statute states that its provisions are not applicable when “inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute”.⁵⁷ Nevertheless, the substance of the

interpretation statute should be known by every legislator and legislative draftsman.

One of these provisions of special significance to law-makers is the section which provides that "the repeal of a statute does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed."⁵⁸ This provision is of great importance in drafting and construing repeal sections of laws. Its effect has often been passed upon by the Supreme Court, annotations from the decisions of which may be found in small type following this provision in the *Code of 1897*. Additional annotations may be found in McClain's *New Iowa Digest*, Vol. IV, pp. 3735-3742, and Callaghan's *Iowa Digest*, Vol. II, p. 1590. The substance of these decisions should be mastered before attempting to draw a repeal section of a proposed law.

Another important provision of the interpretation statute is the one establishing the rule for the computation of time. When a law uses such expression as "six months", "sixty days after", "ten days notice", or "from and after", it becomes necessary for the courts in applying the law to compute the period specified. The statute provides the following rule as a guide for the courts: "In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday."⁵⁹

Annotations of a number of adjudicated cases involving this rule may be found in the Code and digests of Iowa law.⁶⁰ The more important additions made to the

rule by these decisions may be summarized as follows: *first*, the courts will not recognize fractions of a day in computing time unless that is the manifest intent of the legislature; *second*, Sunday will not be construed so as to include legal holidays like Decoration Day; and *third*, the time of day like "12 o'clock at noon" will be taken by the courts to mean according to common time, that is, sun time, and not according to standard time.⁶¹

One other provision of the interpretation statute of Iowa is worthy of note, namely, the section laying down the rule for computing the degrees of consanguinity and affinity. In interpreting statutes specifying relationships the courts are required to use the rules of the Civil Law instead of the rules of the Common Law in computing the degrees of consanguinity and affinity.⁶²

INTERPRETATION AND CONSTRUCTION WITH REFERENCE TO EXISTING LAW

There are still other rules which the courts use in applying laws to particular cases. These constitute the rules of interpretation and construction with reference to existing law. They are indispensable in the application of any system of jurisprudence.

The body or system of law which is in operation in any state or nation is known as its municipal law, to distinguish it from international law which is the code of sanctions presumed to be binding upon the civilized countries of the world in their dealing with each other and with each other's citizens. In interpreting or construing a particular act of legislation it is necessary for the agency which has the function of applying that law to consider it in the light of the whole body of law of which it forms a part. In the United States this is the function of the courts.

With Reference to the Law of Iowa.—The municipal law of Iowa consists of both written and unwritten law. The Constitution of the United States, as well as the Constitution of this State, constitutes a part of the law of Iowa. They are both written instruments. The statutes of Congress, in so far as they pertain to Iowa, and the laws of the General Assembly are written acts which form a part of the law of this State. Likewise the ordinances of cities and incorporated towns when adopted and published according to the regulations prescribed by the General Assembly are written law. But all this written law forms but a small portion of the municipal law of Iowa — a fact that is clearly stated in the following extract from Ebersole's *Encyclopedia of Iowa Law*:

That great body of the law in which we may be said to live and move and have our being, which touches us every time we turn about, and controls for the most part our business and social transactions, is not written at all. It consists of those maxims and customs which, by common consent and immemorial usage, have come to be regarded as a part of the law of the land. It is known as the *common law*, to distinguish it from those portions of the law which are expressed in constitutions and statutes, and denominated, respectively, *constitutional* and *statute law*.⁶³

And so it must be remembered by draftsmen and legislators that every statute will be interpreted in the light of the general system of municipal law in operation in this State, which is a Common Law system of jurisprudence. Thus every act will be construed with reference to the Common Law, the existing statutory law, and the decisions of the court upon the same subject.⁶⁴ This rule is known to the judiciary as the doctrine of the construction of statutes *in paria materia*.⁶⁵ The rule is based upon the theory that legislators like other citizens are

presumed to know the law.⁶⁶ Indeed, the Supreme Court has said that “ ‘the legislature is presumed to have had former statutes before it,’ and to know fully their scope and purpose in passing a subsequent statute.”⁶⁷

The courts will, however, endeavor to trace the history of the legislation on the subject and determine what has been the uniform and consistent purpose of the legislature, or it will attempt to discover how the General Assembly has altered or modified its policies with reference to the subject-matter involved from time to time.⁶⁸ This aid of the courts, however, is not enough to warrant a draftsman in disregarding the municipal law of his own State in framing a proposed law.

With Reference to the Law of other Jurisdictions.—Not only will the courts consider the entire body of law in operation in their own State in construing a statute, but under some conditions they will consult the law of other jurisdictions. Indeed, it is well settled in Iowa that if the General Assembly adopts a statute from another State which has received judicial construction in that State, the courts will presume that the legislature knew and approved of such construction.⁶⁹ This rule, however, is subject to the limitation that the construction and interpretation of a foreign jurisdiction must be consistent with the spirit and policy of the law of Iowa. In regard to this rule the Supreme Court has said:

The limitation that the construction by another state, of a statute of that state enacted here, will be followed only when consistent with the spirit and policy of our laws, is eminently proper. For otherwise we could not avail ourselves of the legislative wisdom of other states, without introducing along with it incongruous and inharmonious judicial construction.⁷⁰

III

SPECIAL FEATURES OF INTERPRETATION AND CONSTRUCTION

IN the preceding pages the general principles of statutory interpretation and construction have been briefly presented. There are, however, some special features of interpretation and construction which seem worthy of independent treatment. These special features do not involve any additional principles of interpretation and construction, but only show the application of general principles to particular acts or provisions.

INTERPRETATION OF PROVISOS, EXCEPTIONS, AND SAVING CLAUSES

According to the adjudicated cases in some jurisdictions a proviso usually introduces a condition or limitation upon the operation of a statute. Sometimes it makes special provision for cases excepted from the general scope of the enactment. An exception generally excepts persons, things, or cases from the operation of the law which would otherwise be included in it. Saving clauses, for the most part, exempt existing rights or causes of action which would otherwise be destroyed. Provisos are generally placed at the end of the section or act and are introduced by the word "provided". Exceptions are usually incorporated in the body of the act or section. They are frequently introduced by the word "except". Saving clauses are for the most part placed near the end of the act and are often introduced by such words as

“nothing in this act shall be held”. Nevertheless, the character of one of these sections does not necessarily depend upon the word or words introducing it. Indeed, the courts sometimes find it difficult to ascertain whether a limitation clause is a proviso, an exception, or a saving clause. In many instances they make no distinction. This seems to be the situation in Iowa, where only a few decisions have been rendered by the Supreme Court.

The early cases laid down the rule that a “proviso” will always be construed by the courts as not enlarging, but rather as explaining, qualifying, and restraining the clause to which it refers.⁷¹ In the last important case decided upon this point — the case of *Campbell v. Jackman Brothers* which was decided in 1908 and involved the validity of the “Mulet Law”—the Supreme Court said in speaking without apparent distinction between these three types of exceptions:

The effect of any sweeping, general statutory provision which is followed by or coupled with an express exception naturally and necessarily depends upon the nature and extent of the exception, and, if this be of such character as to emasculate the principal clause or render any of its terms meaningless, the courts are nevertheless required to give effect to such exception, whatever they may think of the candor or want of candor which controlled the phraseology of the law. Shakespeare has said there is “much virtue in ‘If,’ ” and, had that great man lived to witness the course of prohibitory legislation in Iowa, he would doubtless accord equal potency to “except”. The office of an exception in the statute is, generally speaking, to take or exclude from the operation of the statute certain things or subjects which would otherwise be included therein, and, where the exception is clearly expressed and is within the constitutional power of the Legislature, those who question its justice, wisdom or policy must seek the remedy at the hands of the Legislature itself. As already

stated the court is without power in the premises except to give effect to the statute as it stands.⁷²

In Iowa then it appears that the same rule of interpretation and construction will be applied to all three of these forms of making exceptions, namely, that they are limiting or qualifying clauses or sections. If this is true many of the complications arising in some of the States will be avoided. (For further discussion of this complication see the writer's paper on the *Methods of Statute Law-making in Iowa*, pp. 201, 202; and for a discussion of the use of the proviso, saving clause, and exception in Iowa see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 366-373.)

INTERPRETATION OF MANDATORY AND DIRECTORY STATUTES AND PROVISIONS

The rules which the courts of Iowa will apply to directory or mandatory provisions do not differ from those which they will apply to acts in general, that is, there are no new principles involved in this connection: it is all a question of intention. So the legislator need only remember that the question as to whether a statute is to be construed as directory or mandatory does not depend upon the form of the statute, but upon the intention of the legislature to be determined from "a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other".⁷³

It is a general rule, however, that statutes directing the mode of procedure of a public officer as to time or method are directory. There are a large number of these statutory regulations guiding the conduct of public officers which do not curtail their power or right to act in

some other manner. This is especially true of requirements designed to secure order, system, and dispatch in proceedings, and by the disregard of which the rights of parties interested can not be affected. Provisions of this type will not usually be construed by the courts as being mandatory, unless accompanied by negative words which import that the acts are not to be done in any other manner or at any other time. If, however, the requirements were intended to protect the citizen and prevent a sacrifice of his property, and a disregard of these requirements might and generally would be injurious, such provisions are mandatory and not directory.⁷⁴

In applying these rules, moreover, the court will sometimes go to the extreme of holding "may" to mean "shall" or "must". But such a construction will not be given if inconsistent with the manifest intent of the legislature or repugnant to the text of the statute.⁷⁵ (For a further discussion of mandatory and directory statutes see Mr. Van der Zee's paper on the *Form and Language of Statutes in Iowa* in this volume, pp. 379-381.)

LIBERAL AND STRICT INTERPRETATION

It is a well settled principle of the common law of interpretation and construction that acts in derogation of the Common Law itself will be strictly construed, but the *Code of 1897* provides that "the rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice."⁷⁶

In applying this section the Supreme Court has decided that the Common Law rule of interpretation and

construction has been abolished by its provisions so that all statutes in Iowa will now be given a liberal construction except criminal acts.⁷⁷ The court has said that different rules apply to criminal cases than those which obtain in civil matters, and as a result the above section does not apply to criminal statutes. Consequently the criminal law of Iowa will always be given a strict construction by the courts.⁷⁸

PROSPECTIVE AND RETROSPECTIVE ACTS

Unless otherwise stated all laws will be presumed by the courts to operate prospectively and not retrospectively. In other words, it must be the manifest intent of the legislature to have a statute operate retrospectively in order that it may be so applied by the judiciary: otherwise it will be given only a prospective operation. There are a few exceptions to this rule and one of them concerns remedial acts. In Iowa statutes which provide remedies and are therefore additions to the adjective law will be given a retrospective turn. Likewise it has been held that when a consideration of public policy requires the law-making body to give a law a retrospective character, the courts will infer that such retrospective character does exist even though there is no expressed declaration to that effect.⁷⁹

In connection with the special features discussed in the preceding paragraphs it must at all times be remembered by draftsmen and legislators that when the statute is clear and unambiguous,⁸⁰ when a literal interpretation would not lead to absurdity or injustice,⁸¹ "there is no room for construction" by the courts.⁸² Under such circumstances there is no question as to the effect of an ex-

ception or proviso; the courts do not have to puzzle over the provisions of a section to determine if it is mandatory or directory; there is no need of a rule of liberal construction; and the time of operation is determined from the statute. The act speaks for itself.

A more detailed treatment of the adjudicated cases in which statutes have been interpreted and construed by the Supreme Court of Iowa would show many instances in the judicial history of this State where the language of the court has been as unsatisfactory as the language of the General Assembly. This was the case in the decisions involving the use of the journals of the legislature as extrinsic aids in construction. In the light of these facts it could hardly be said that the General Assembly alone is guilty of using inaccurate and meaningless language. Is it not, then, safe to say that both the courts and legislature of this State have found human language a deficient agent for conveying ideas? Should the General Assembly alone be blamed for the character of statute law? Or should the courts be charged with some of the responsibility? Perhaps after all many of the defects in modern statute law are inherent in the methods of enactment and application.

NOTES AND REFERENCES

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- ² *Noble v. The State*, 1 G. Greene 325, at 330.
- ³ *Fry v. Fry*, 125 Iowa 424, at 430.
- ⁴ *Woods v. Mains*, 1 G. Greene 275; *Haskel v. Burlington*, 30 Iowa 232; *Wheelock v. Madison County*, 75 Iowa 147; *Chamberlain v. Iowa Telephone Company*, 119 Iowa 619, at 621.
- ⁵ *McShane v. Independent District of Pleasant Grove*, 76 Iowa 333; *Banker's Mutual Casualty Co. v. First National Bank*, 131 Iowa 456, at 464; *State v. Smith*, 7 Iowa 244; *Allen v. Davenport*, 107 Iowa 90.
- ⁶ *Glass v. Cedar Rapids*, 68 Iowa 207, at 210.
- ⁷ *City Council of Marion v. Cedar Rapids & M. C. R. Co.*, 120 Iowa 259, at 264.
- ⁸ *Caster v. McClellan*, 132 Iowa 502.
- ⁹ *Noble v. The State*, 1 G. Greene 325, at 330.
- ¹⁰ *Code of 1897*, Sec. 48.
- ¹¹ *Noble v. The State*, 1 G. Greene 325; *Dilger v. Palmer*, 60 Iowa 117; *Williams v. Poor*, 65 Iowa 410.
- ¹² *Dilger v. Palmer*, 60 Iowa 117, at 130.
- ¹³ *The State v. Smith*, 46 Iowa 670, at 673; *State v. Lightfoot*, 107 Iowa 344, at 349.
- ¹⁴ *Ripley v. Gifford*, 11 Iowa 367, at 368, 369.
- ¹⁵ *Burlington Cedar Rapids & Northern R. Co. v. Dey*, 82 Iowa 312; *Duncombe v. Prindle*, 12 Iowa 1; *Smith v. Railroad Commissioners*, 86 Iowa 202, at 207-211; *Kenyon v. Cedar Rapids*, 124 Iowa 195.
- ¹⁶ *Equitable Life Ins. Co. v. Gleason*, 56 Iowa 47, at 49.
- ¹⁷ *Rohlf v. Kasemeier*, 140 Iowa 182, at 187; *McCarney v. Bettendorf Axle Co.*, 156 Iowa 418, at 426.
- ¹⁸ *The State v. Campbell*, 76 Iowa 122, at 125.
- ¹⁹ *The State v. Wignall*, 150 Iowa 650, at 657; *McCarney v. Bettendorf Axle Co.*, 156 Iowa 418, at 426, 427.

- ²⁰ *McCarney v. Bettendorf Axle Co.*, 156 Iowa 418, at 425.
- ²¹ *District Township of Dubuque v. Dubuque*, 7 Iowa 262, at 276.
- ²² *The State v. Smith*, 46 Iowa 670, at 673.
- ²³ *The State v. Myers*, 10 Iowa 448; *Oltrogge v. Schutte*, 51 Iowa 223; *Williams v. Poor*, 65 Iowa 410.
- ²⁴ *Grunewald v. Cedar Rapids*, 118 Iowa 222, at 224, 225; *Grimmell v. Des Moines*, 57 Iowa 144, at 146; *Haerther v. Mohr*, 114 Iowa 636, at 637; *Code of 1897*, Sec. 48, Par. 3.
- ²⁵ *Code of 1897*, Sec. 48, Par. 2.
- ²⁶ *Smith v. Brantz*, 127 Iowa 115, at 117; *Bailies v. City of Des Moines*, 127 Iowa 124; *Jewell v. Board of Trustees*, 113 Iowa 47.
- ²⁷ *The State v. Santee*, 111 Iowa 1, at 5, 6; *Jewell v. Board of Trustees*, 113 Iowa 47; *Bailies v. City of Des Moines*, 127 Iowa 124.
- ²⁸ *The State v. Carson*, 147 Iowa 561, at 563; *State v. White*, 45 Iowa 325; *State v. Hockett*, 70 Iowa 442, at 453; *The State v. Santee*, 111 Iowa 1, at 3, 4.
- ²⁹ *District Township of Dubuque v. Dubuque*, 7 Iowa 262, at 275, 276; *Bohlf v. Kasemeier*, 140 Iowa 182, at 185, 186.
- ³⁰ *Crabell v. Wapello Coal Co.*, 68 Iowa 751.
- ³¹ *Hunt v. Farmers' Insurance Co.*, 67 Iowa 742.
- ³² *Grimes v. Legion of Honor*, 97 Iowa 315, at 324.
- ³³ *Goerdts v. Trumman*, 118 Iowa 207, at 209; *Kenyon v. Cedar Rapids*, 124 Iowa 195, at 198; *Eckerson v. Des Moines*, 137 Iowa 452; *The State v. Bank*, 139 Iowa 338; *McKinnon v. Sanders*, 161 Iowa 555, at 559; *The State v. Read*, 162 Iowa 572, at 577.
- ³⁴ *Keokuk v. Scroggs*, 39 Iowa 447, at 451, 452; *Burlington v. Leebrick*, 43 Iowa 252, at 258; *Banker's Mutual Casualty Co. v. First National Bank*, 131 Iowa 456, at 462; *McBride v. Des Moines City Railway Co.*, 134 Iowa 398, at 405.
- ³⁵ *McCain v. Des Moines*, 128 Iowa 331, at 333; *Duncombe v. Prindle*, 12 Iowa 1, at 12.
- ³⁶ *Windsor v. Des Moines*, 110 Iowa 175, at 180.
- ³⁷ *Lederer & Strauss v. Colonial Investment Co.*, 130 Iowa 157, at 158; *Windsor v. Des Moines*, 110 Iowa 175, at 180.
- ³⁸ *Laws of Iowa*, 1902, pp. 98, 99, 1907, p. 166, 1911, pp. 177, 178, 1913, pp. 163-165; *Schultz v. Parker*, 158 Iowa 42, at 48, 49.

³⁹ *Woods v. Mains*, 1 G. Greene 275, at 292; *Stephens v. The D. & St. P. R. Co.*, 36 Iowa 327, at 329; *Long v. Schee*, 86 Iowa 619; *Wheelock v. Madison County*, 75 Iowa 147.

⁴⁰ *Clare v. The State*, 5 Iowa 509; *Duncombe v. Prindle*, 12 Iowa 1, at 11; *Collins v. Laucier*, 45 Iowa 702; *Miller v. City of Oelwein*, 155 Iowa 706, at 710, 711; *Conly v. Dilley*, 153 Iowa 677, at 692, 693.

⁴¹ *Duncombe v. Prindle*, 12 Iowa 1, at 11.

⁴² *Miller v. City of Oelwein*, 155 Iowa 706, at 710, 711.

⁴³ *Des Moines Ry. Co. v. Des Moines*, 152 Iowa 18, at 25.

⁴⁴ *Des Moines Ry. Co. v. Des Moines*, 152 Iowa 18, at 27, 28.

⁴⁵ *Koehler & Lange v. Hill*, 60 Iowa 541.

⁴⁶ *Koehler & Lange v. Hill*, 60 Iowa 541, at 548.

⁴⁷ Quoted in *Koehler & Lange v. Hill*, 60 Iowa 543, at 549.

⁴⁸ *Koehler & Lange v. Hill*, 60 Iowa 543.

⁴⁹ *Code of 1897*, Sec. 132.

⁵⁰ *Code of 1897*, Sec. 4650.

⁵¹ *Koehler & Lange v. Hill*, 60 Iowa 543, at 553.

⁵² *Jordan v. Circuit Court of Wapello Co.*, 69 Iowa 177, at 182, 183.

⁵³ *The State v. Burk*, 88 Iowa 661, at 665; *Tennant v. Kuhlemeier*, 142 Iowa 241, at 245.

⁵⁴ *Des Moines Ry. Co. v. Des Moines*, 152 Iowa 18.

⁵⁵ *State v. Burk*, 88 Iowa 661, at 664.

⁵⁶ *Chamberlain v. Iowa Telephone Co.*, 119 Iowa 619, at 627; *Eckerson v. Des Moines*, 137 Iowa 452, at 487; *Slutts v. Dana*, 138 Iowa 244, at 250.

⁵⁷ *Code of 1897*, Sec. 48.

⁵⁸ *Code of 1897*, Sec. 48, Par. 1.

⁵⁹ *Code of 1897*, Sec. 48, Par. 23.

⁶⁰ *McClain's New Iowa Digest*, Vol. IV, pp. 3906, 3907; *Callaghan's Iowa Digest*, Vol. II, p. 1658.

⁶¹ *Small v. Wakefield*, 84 Iowa 533, at 536; *German Savings Bank v. Cady*, 114 Iowa 228, at 231; *Jones v. German Ins. Co.*, 110 Iowa 75.

⁶² *Code of 1897*, Sec. 48, Par. 24.

⁶³ *Ebersole's Encyclopedia of Iowa Law*, p. 7.

⁶⁴ *Drahos v. Kopesky*, 132 Iowa 417, at 500; *Haskel v. Burlington*, 51 Iowa 232; *Stephens v. The D. & St. P. R. Co.*, 36 Iowa 327; *State v. McEntee*, 68 Iowa 381; *Allen v. City of Davenport*, 107 Iowa 90; *Rohlf v. Kasemeier*, 140 Iowa 182, at 187.

⁶⁵ *Stephens v. The D. & St. P. R. Co.*, 36 Iowa 327, at 332; *Drahos v. Kopesky*, 132 Iowa 417, at 501.

⁶⁶ *Chamberlain v. Iowa Telephone Co.*, 119 Iowa 619, at 628.

⁶⁷ *Chamberlain v. Iowa Telephone Co.*, 119 Iowa 619, at 628.

⁶⁸ *Chamberlain v. Iowa Telephone Co.*, 119 Iowa 619; *Des Moines Ry. Co. v. Des Moines*, 152 Iowa 18.

⁶⁹ *Eldridge v. Kuehl*, 27 Iowa 160, at 176; *Pangborn v. Westlake*, 37 Iowa 546, at 550.

⁷⁰ *Jameson v. Burton*, 43 Iowa 282, at 285, 286.

⁷¹ *Rice v. City of Keokuk*, 15 Iowa 579, at 583.

⁷² *Campbell v. Jackman Bros.*, 140 Iowa 476, at 480.

⁷³ *Lumber Co. v. Board of Review*, 161 Iowa 504, at 507.

⁷⁴ *Hubbell v. Polk Co.*, 106 Iowa 618, at 620, 621; *Johnson v. Carson*, 3 G. Greene 499.

⁷⁵ *The State v. Hartman*, 122 Iowa 104, at 105, 106; *Queeny v. Higgins*, 136 Iowa 573, at 574.

⁷⁶ *Code of 1897*, Sec. 3446; *Strother v. The Hamburg*, 11 Iowa 59, at 61; *Kramer v. Rebman*, 9 Iowa 114, at 122.

⁷⁷ *Tathwell v. Cedar Rapids*, 122 Iowa 50, at 55, 56; *Chiesa & Co. v. City of Des Moines*, 158 Iowa 343, at 346.

⁷⁸ *Rohlf v. Kasemeier*, 140 Iowa 182, at 105; *The State v. McCoy*, 140 Iowa 500, at 503; *The State v. Read*, 162 Iowa 572, at 575.

⁷⁹ *Bartruff v. Remey*, 15 Iowa 257, at 258; *Haskel v. City of Burlington*, 30 Iowa 232, at 235; *Galusha v. Wendt*, 114 Iowa 597.

⁸⁰ *In re Assignment of Shonkwiler*, 104 Iowa 67, at 69, 70; *In re Estate of King*, 105 Iowa 320, at 325.

⁸¹ *The State v. Smith*, 46 Iowa 470, at 673; *The State v. Botkin*, 71 Iowa 87, at 89; *The State v. Wignall*, 150 Iowa 650, at 657.

⁸² *Fry v. Fry*, 125 Iowa 424, at 430.

THE DRAFTING OF STATUTES
BY
JACOB VAN DER ZEE

I

PRIMARY CAUSES OF DEFECTIVE STATUTES

THE memory of Jeremy Bentham is deservedly held in special veneration on account of the enormous influence which he exercised over the form and subject-matter of legislation.¹ And yet, although his labors extended over the last quarter of the eighteenth century and a little more than the first quarter of the nineteenth, so far as the form of statutes in English-speaking countries is concerned the greatest progress and improvement have come only in recent years. Especially is this true of the United States. Although Americans have never demanded special training in the science of legislation² they have gradually had the conviction borne in upon them that legislators, like other public servants, need to be equipped with scientific knowledge or, at any rate, that scientific knowledge and expert assistance should be placed at their disposal for constant use.

Nor have the lawmakers themselves been the last to realize what is wrong: in many States they have provided agencies to aid in the difficult task of writing legislation, knowing only too well from experience that the English language wrapped up in the ordinary statute is an instrumentality as dangerous as an explosive, for the consequences of which they must regard themselves primarily responsible. If, then, the texts of laws enacted by a legislature are frequently uncertain and otherwise defective, what are the immediate causes? Simply stated, there

are two: the imperfection of human speech in general and the language and style of statutes in particular.

IMPERFECTION OF HUMAN LANGUAGE

It has been pointed out that the ambiguity of human speech is due to a vast variety of causes which, whether intentional or unintentional, have not been sufficiently considered. There is scarcely a word which does not admit of various meanings. Since precision is impossible except perhaps in mathematics, there can be no such thing as absolute language. Hence the imperfection of human language can not be entirely avoided.³ At the threshold of law-writing, therefore, the legislator comes face to face with the inherent uncertainty of the language which he must use in order to convey his ideas.

LANGUAGE AND STYLE OF STATUTES

The difficulty just described is not, however, nearly so fruitful a source of the defective form of statutes as the language and style actually adopted by the framers of statutes.⁴ With reference to the suggestion that the legislature expresses its will in too many words, Judge Story long ago commented as follows:

I believe that there are very few acts of legislation in the Statute Book, either of the State, or of the National Government, or of the British Parliament, which do not fall within the same predicament, and are not open to the same reproach. The truth is, that it arises sometimes from loose and inaccurate habits of composition of the draftsman; sometimes from hasty and unrevised legislation; but more frequently from abundant and, perhaps, over-anxious caution.⁵

It is believed that the framers of statutes are to blame for the faults which lie on the surface of the law—

the redundant phrases, the verbiage, the involved and cumbrous sentences. What led to the unique style of writing to which legislative draftsmen have so long and so generally been addicted? The answer seems to be that the early practice of judges in adhering strictly to the law, to its exact expressions, induced legislators to be as explicit and minute as possible in their phraseology. Yet, many writers have borne testimony to the vanity of attempting by a mere multiplication of words and phrases to achieve precision in the law: explanations and specifications oftentimes piled high, instead of promoting clearness, in fact only produce greater obscurity and uncertainty.⁶ What has sometimes been called the most important statute of the United States — the Hepburn Act — has also been described as the “most horrible example of slovenliness, bad form, and contradiction”— which a good draftsman with two days’ honest work could boil down from twenty-seven to four pages.⁷

Even though perfect or absolute perspicuity in the language of statutes is an ideal impossible of attainment, good reason exists for trying in every conceivable way to help the individual member of the legislature in drafting his bills.⁸ He is frequently unlettered or insufficiently trained in English grammar and syntax; sometimes he is not decidedly clear on what he writes, not being fully master of a subject about which his ideas are still vacillating; and oftentimes he does not have the opportunity to acquire a knowledge of the matter which he wishes to see embodied in legislative form.

The lawmakers of Iowa need have no feeling that such criticism amounts to severe and unjust censure. On the contrary they may be defended as draftsmen just as gallantly as English judges have come to the defence of

the members of their Parliament. Nothing is so easy as to pull statutes to pieces: nothing so difficult as to frame them properly. Persons who have never drawn up laws themselves easily find fault with those who have, because they do not know how hard it is to use exactly precise words and to foresee all the difficulties that may grow out of the language of statutes.⁹ Certainly it is not discrediting the citizen who wins and occupies a seat in the legislature to say that he can not draft a statute off-hand. Since law-writing is as much a matter of study and training as any form of literary production, and since the membership of the General Assembly consists so largely of recruits after every State election, "the larger the number of inexperienced men in the legislature the poorer the legislative product."¹⁰

Since the superficial defects of legislation are due for the most part to the individual draftsman, the question arises: how far is the General Assembly as a whole responsible for the final form of the laws? It would seem that the legislature itself is responsible for all faults more serious than mere faults of style — as for instance those which sometimes paralyze the working of statutes. A well-known writer on this subject states his opinion as follows:

Hasty and ill-considered Acts aimed at a partial evil, and sweeping away or tampering with some vital principle of law; amending Acts which have proved unintelligible made worse by reamendment, familiar words rendered strange by interpretation clauses, local Acts extended in part to the whole country, and again restricted in part by subsequent efforts of piecemeal legislation, are evils of constant occurrence. . . .¹¹

It is alleged that the State legislature, after spending much time in debating the form and wording of a vast

number of bills, relies altogether too much upon the wisdom of the courts for the correction of mistakes and relief from abuses or omissions in the bills which pass. No doubt the system of legislative procedure — the gauntlet which every bill must run — is not especially designed to hinder defective legislation: business in both houses of the General Assembly is sometimes rushed, and only by exceeding the speed limit can the legislature cram into a session and turn out a grist of laws such as that presented to the people of Iowa every two years.¹² Over-legislation, many thoughtful men believe, is the great cause of loose laws: particular legislative proposals do not and can not receive the attention which they should have before they are given a place in the statute book. On this point the trenchant remark of Elihu Root is worthy of quotation: "There is a useless lawsuit in every useless word of a statute and every loose, sloppy phrase plays the part of the typhoid carrier."¹³ (For a detailed discussion of the language of statutes see the writer's paper on the *Form and Language of Statutes in Iowa* in this volume.)

II

AGENCIES FOR THE DRAFTING AND IMPROVEMENT OF LEGISLATION

GOVERNMENTS which have permitted the people or their representatives a voice in the making of laws have in three different ways solved the formidable problem of putting legislation into final shape both as to form and substance. A brief study of these solutions — Roman, English, and American — will reveal in general how popular assemblies the world over have made statutes.

STATUTE LAW-MAKING IN ROME

The Roman people, whose legal system has influenced the world so tremendously for centuries, had nothing to do with the wording of statutes: they possessed only the power of accepting or rejecting the bills submitted. They had no opportunity to criticise or revise, no chance to discuss or amend the legislation proposed; but this fact seems not to have prevented Roman laws from being excellent in point of form, that is, clear, consistent, and symmetrical. Since popular assemblies could not alter but only vote "Yes" or "No" to the whole bill, statutes possessed the form in which they were originally proposed. Such laws, it is declared, are more likely to be plain and simple than those which have been cut about, pared down, or added to by the action of some revising committee or second chamber which is probably dissimilar in opinion from the first chamber or possibly disposed to differ for the sake of differing.

On account of the character of Roman popular assemblies — they consisted of ordinary citizens — proposed measures were short, terse, and clear. The executive department of the Roman state, knowing that a bill had to be understood by the citizens before it would be approved, prepared it with scrupulous care: erroneous provisions which might work injustice to the people if a bill became law would surely endanger the passage of the bill. Accordingly, the proposer spared no effort to give to his measure the merits “of breadth, lucidity, logical arrangement, and conciseness of expression” — every possible elegance of form to increase its chances of success. The statutes of the Roman people are, therefore, said to be examples of excellent drafting, possessing three great merits: there were few of them; they were brief; and they were clear. A profound student of Roman legislation asserts: “The sharp, stern, almost grim conciseness and precision of the Twelve Tables [the earliest Roman Code] seem to have been always present to the mind of the Roman draftsman as the model he ought to follow.”

When legislation by popular assemblies ceased, the Roman Senate took up the work. It was better fitted than the people to exercise legislative authority because it comprised men of mature age, men versed in affairs, many of whom had filled high office and nearly all of whom had some knowledge of law and administration. These elders could also amend measures brought in by the Roman executive officers. In the course of time, however, the Emperors alone undertook to declare the law without consulting the assembly or the Senate: indeed, it was their legislation which “gave to the Roman law the shape in which it descended to the modern world”. In accomplishing this great work they relied upon jurists to

prompt, direct, and shape the laws: they commanded the services of legal councillors or experts who had devoted themselves to life-long legal study and really represented the highest trained intellect of the Roman community. And when the judicial and literary ability of these advisers declined, legal style and diction steadily deteriorated. The language of legislation grew "more and more rhetorical, pompous, and turgid", and while becoming more prolix became also less exact. At the same time this later imperial legislation avoided one fault so characteristic of English and American statutes: it went measureless into detail since it did not seek to exhaust all possible cases, and provide for every one of them — a merit which Mr. Bryce points out was due "not so much to skill on the part of the Roman draftsmen, as to the range of power allowed to Roman officials and judges, and to the fair recognition of the rights of the individual subject."¹⁴

STATUTE LAW-MAKING IN ENGLAND

The laws enacted in Great Britain have for many years been initiated and shaped almost entirely by the members of Parliament who also constitute the executive authority of the country. Owing to the gradual evolution of the English political organism, law-making in England presents a story of unique interest to the parliamentary historian. Down to the year 1487 English statutes were drawn up by judges, and later by conveyancers or persons trained in the knack of writing deeds for the conveyance of real estate. Paid at a certain rate per line of composition, these men diluted the language of statutes with long series of synonymous words: they are to blame for inaugurating the wordy style which lasted for over three hundred years in England and her colonies. Indeed, the

“uncouth, barbarous phraseology” and “the prodigious length” which characterized their labors are frequently duplicated by draftsmen in America at the present day.¹⁵

In England, however, thanks to the attacks of Jeremy Bentham and others, the government’s attention was at last attracted to the drafting of statutes. A plan for the general amendment of the system was prepared in 1838 by Arthur Symonds, whose papers relative to the drawing of acts and to the means of insuring their uniformity in language, form, arrangement, and matter were laid before Parliament.¹⁶ Although he suggested the selection of a public officer to revise defective drafts of statutes to conform with certain regulations, and although other remedies were recommended later, the English government made no provision for a permanent office of the sort needed until the year 1861, when Henry Thring was appointed counsel to the Home Office.

As a practicing lawyer Mr. Thring had made a special study of Coode’s book on legal expression and of the New York codes of David Dudley Field. He had even helped to draft bills, and is said to have begun in 1854 the practice of breaking up acts into parts, and sections into paragraphs and sub-sections. When the office of Parliamentary Counsel to the Treasury was established in 1869, Mr. Thring’s services were retained until 1886 and since then others have filled the position with good results so far as the *form* of English legislation is concerned. With respect to simplicity and clearness the language of English statutes for half a century has been far superior to the “verbose and obscure” phraseology of former enactments.¹⁷

The expert official draftsman of England is a natural result of the exceptional relation between the Executive

and the Parliament in that country. The heads of executive departments, occupying seats in Parliament as members and supported in their policies by a majority of members, have gradually monopolized the attention of the people's representatives for measures introduced by the ministry of the day. Although private members may with but little hope of ultimate success, initiate bills and introduce them, yet English critics do not regret the passing of the individual member from the center of the stage because the interests of the whole nation are better kept in the foreground when the laws by which it is to be governed are carefully planned by the heads of executive offices and prepared by their right-hand man, the Parliamentary Counsel.

The Parliamentary Counsel's legislative workshop—with its assistant, shorthand writers, office-keeper, and others—is open for business a couple of months before the session of Parliament begins in January. Executive officers inform the Counsel what bills are likely to be required, and at the same time give him certain general instructions. Later personal conferences bring out the finer points desired in proposed legislation, so that the draftsman may be enabled to embody in statutory form the wants of the government. Thus the executive officers by suggestion and also later by persuasion upon the floor of Parliament do much to determine the form of bills, although Parliament as a whole, of course, dictates the ultimate form. It is the latter fact which caused James Bryce to say: "As respects amendments in committee and final revision, our English procedure is not satisfactory."¹⁸

It is said that the "amount of thought, time, and labour which is bestowed on the preparation of the more

important Government measures in England before they emerge to the public view is not fully realized.”¹⁹ Months and sometimes years are spent in the preliminary elaboration of bills. The work of the English expert draftsman is exceptionally difficult and laborious; it is done under trying and exhausting conditions; and “although it is subjected, and properly subjected, to stringent criticism, it has, in the opinion of competent judges, accomplished much in improving the form of our statute law.” Legal language in England is now more concise, uniform, and accurate, and the arrangement of statutes is more logical and consistent than ever before. The labors of the English expert, however, have been lightened by the establishment of a Statute Law Revision Committee and by the passage of the Interpretation Act of 1889.²⁰

So far as the sum total of English legislation is concerned, statutes have for centuries been piled up, act by act, until they form a chaotic heap. Severely handicapped by this fact they have been described as “a tortuous and ungodly jumble”, and acts amendatory of other acts bear the name of “Chinese puzzles”. Realizing, therefore, that the consolidation of statutes such as has been effected in some American States is preferable to the chaotic condition of their written law, Englishmen have made some progress in that direction, but they acknowledge that Japan rightly looks to France for models in legislation rather than to England. At the same time it should not be forgotten that English government officials in seeking relief from defects which formerly inhered in the individual statute felt they had “probably nothing to learn from the United States”, where the preparation of bills was usually the work of amateurs. It may be stated in conclusion that the need of scientific

bill-drafting as felt in England has also been recognized in the British colonies; accordingly in most of them the Attorney-General takes a leading part in the preparation of bills, while in others official draftsmen are employed.²¹

STATUTE LAW-MAKING IN THE UNITED STATES

A third method of drawing up legislation is that in vogue in most of the countries of continental Europe and in the United States: in these countries the legislature delegates the elaboration of bills to its committees. In France, although committees figure prominently in the work of amending and even of remolding, the framing of bills is left to the executive officers as well as to members of the legislature; but in either case it is said that the "Frenchman's innate respect for his language, his appreciation of form, precision, and logical arrangement, display themselves in legislation as well as in other forms of composition, and a well-drawn French law is a model of its kind."²²

In continental countries, as in England, "the framing of legislation is regarded as an executive or administrative function, while the legislature exercises its control by scrutiny, approval, amendment or rejection. This means that the drafting is done by officials who are legally or technically trained, who have considerable experience in legislation and who can be held responsible by their superiors for errors and defects which expose the latter to Parliamentary criticism, censure or defeat. Manifestly this is a powerful factor making for careful legislation."²³

In the United States, on the other hand, the executive department of neither State nor nation is responsible for the preparation, introduction, or passage of bills. Draft-

ed by all sorts of agencies, private or official, measures are introduced by members of the legislature, are referred to legislative committees for consideration and necessary modification, and if favorably reported they undergo inspection, debate, and perhaps further amendment on the floors of both houses. Bills numbered by the thousand are introduced at every session of Congress and, as a foreign observer remarks, their rate of mortality "approximates to that among the infant codfish." Compared with English legislative procedure, the American system, State or national, is characterized by two important defects: an absence of responsibility for the drafting of measures and an absence of security for the conformity of statutes to general principles and for their consistency with each other. Furthermore, American statutes as compared with those of England, besides receiving less attention and criticism, contain more details—matters which might properly be left to administrative action and administrative regulations, thus reducing statutes to simple statements of general policy.²⁴

AMERICAN LEGISLATIVE REFERENCE DEPARTMENTS

The American Bar Association in 1909 and again in 1913 adopted a resolution declaring that "an official legislative drafting and reference service, when properly organized and directed, forms an efficient agency tending to prevent the enactment of unconstitutional, obscure and otherwise defective statutes and to secure the utmost brevity and simplicity consistent with accuracy in the language of statutes". The Association recommended the establishment and generous support of such an agency at Washington.²⁵ Congress at once adopted the suggestion by appropriating \$25,000 for a legislative reference

bureau to which members of the national legislature may go for information but not for assistance in drafting measures. Since the beginning of this experiment in 1914, the United States government has furnished legislators a staff of men trained in law and research, whose spirit and methods are scientific, and whose object it is "to state the facts and (so far as conclusions are ventured) the truth."²⁶

What the United States government thus undertook was by no means a novelty in this country. In 1890 Melville Dewey initiated the legislative reference movement to obtain adequate, scientific data for the use of lawmakers in the State of New York. The first legislative reference library in the United States, however, was established in Wisconsin in the year 1903 under the direction of "a man who had carefully studied history, economics, and politics". The growing complexity of social, political, and industrial life seems to have convinced American legislatures of the need of special boards, bureaus, and commissions of experts — men who are trained and versed in special phases of the public business.

The "legislative laboratory and clearing house of information" organized and developed in Wisconsin so clearly proved its usefulness that many other States have imitated Wisconsin's example. State libraries which had in theory supplied the legislatures with information for law-making purposes did not in practice make their stores of materials easily accessible to legislators. The legislative reference work that is now being done in over thirty Commonwealths reflects the long-standing needs of American lawmakers: now with a minimum of effort to the legislator persons especially employed for the pur-

pose collect and classify current and historical information from almost every possible source. Simply stated, the object of these legislative reference agencies is to furnish the facts — to put the writers of bills in full possession of the facts on which wise legislation may be grounded.

Leaving out of account those States in which State libraries perform some of the work, legislative reference departments or bureaus exist by reason of special appropriation acts without further express statutory provisions relative to organization in the following Commonwealths: Iowa, Kansas, Colorado, Missouri, Montana, Washington, Texas, Georgia, West Virginia, New Jersey, New Hampshire, and Connecticut. It is not necessary to describe or discuss in this connection the amount and nature of the work done either in these twelve States or in the nineteen Commonwealths which appear to have permanent, full-fledged legislative reference bureaus or departments, namely, Wisconsin, Nebraska, North Dakota, South Dakota, Illinois, Michigan, Indiana, Ohio, Oregon, California, Arizona, North Carolina, Alabama, Virginia, Vermont, Rhode Island, Massachusetts, Pennsylvania, and New York.²⁷

AMERICAN BILL-DRAFTING DEPARTMENTS

From the foregoing paragraphs it may be seen that one of the two problems of the man who wishes to draft a bill has been solved in many States: through legislative reference work the legislator is considerably assisted in the task of marshalling the contents or subject-matter to be embodied in his bill. That there is a second problem just as important only a few State legislatures have thus far recognized: the legislator who wishes to draft a bill

must decide how best to accomplish his object and "how to put it into clear and forceful language." Surely, if precision of language and elegance and symmetry of form are the characteristics of a good law, the average legislator requires more than the assistance of a reference librarian.²⁸

The vital importance of the careful preparation of a measure, while still imperfectly realized in most American Commonwealths, has won growing recognition in recent years. The bestowing of "all the time and all the brain-labour available" on the substance and the form of bills is a necessary requirement in the drafting of good statutes. Aware that their lack of technical aid is a positive handicap, a few State legislatures have made liberal provision for drafting bureaus or expert draftsmen to clothe measures in the proper language with due regard to the body of existing legislation and judicial decisions. Thus a beginning has been made in the passing of statutes in a form calculated to suppress and not to breed useless litigation — a remedy that is within the reach of every law-making body.²⁹

Congress has never had the services of expert draftsmen, although the need has not been unnoticed. Indeed, the recently instituted legislative reference department was criticised on the ground that instead of drafting bills it merely made compilations of data. With reference to bill-drafting at Washington the Librarian of Congress declared "that a certain number of members of each House, experts in legislation, do not need the service; others might profit by it, but do not desire it; and the rest desire it very keenly. The last group includes many men of experience and legal training. They would not admit themselves incompetent to draft a bill, if that were their

only business; but they recognize that in their absorption in the substance of a measure, they may very possibly overlook some defect in the form, which might appear to a critic considering merely the form: and they would not imperil the substance by a defect in the mere form. They would take no chances."³⁰

The American Bar Association, perhaps the most sincerely active organization in the promotion of national and State official legislative reference and drafting departments, as long ago as the year 1882 suggested that the duty of revising and maturing bills for State legislatures "be intrusted to competent officers, either by the creation of special commissions or committees of revision, or by devolving the duty upon the Attorney General". In 1885 a committee reported that the best thing the Bar Association could do in the matter of improving the form of statutes was to draft bills and secure their introduction in the State legislatures. One year later the same committee submitted a draft of "An Act to create a Joint Standing Committee for the Revision of Bills", which proposed that five members of each house with power to require the Attorney-General's assistance or to employ counsel should examine all measures as to clearness of expression and harmony with existing statutes: this report was referred back to the committee ten years later.³¹

In 1897 the United States had "no class of skilled legislators—men trained to construct laws as men are trained in all the arts and professions of the world". Here, in the making of law "all requirements of special study, experience, training, and legal insight" were absent. The situation was aptly described in the following words, which are quoted from an excellent address delivered before the American Bar Association in 1897:

Generally speaking, statutes are the products of unascertainable authors—children of nobody,—unable to boast of definite parentage. No one certifies to their completeness or accuracy. They are not prepared upon careful plans, submitted and supervised by expert architects of law-building. It is all chance and haphazard; the event must determine whether they are good or bad, whether they express the actual intent of the author or some intent entirely foreign to his will.³²

The State of New York appears to have been one of the first to attempt to secure some sort of professional assistance in the preparation of bills. For some years after 1886 that State made provision for the services of a joint committee of the legislature to put bills into the best possible form before passage, the Attorney-General being required to furnish aid upon request. That this arrangement was not a satisfactory solution of the difficulty is clear from the fact that the committee did not devote much time to the work during the sessions of the legislature and the Attorney-General was too busy. Later a legislative counsel and draftsman was appointed; but because State Senators disdained to use him, the form of legislation was in general not much more satisfactory than before.³³

In Connecticut the clerk of bills has served private members and legislative committees in the work of drafting since the year 1901.³⁴ In Wisconsin the director of the legislative reference library at first offered aid in the drafting of bills upon his own responsibility. Then, in 1907, upon his recommendation, the sum of \$6000 was set aside “for the period of each legislative session and the period of two months just preceding each legislative session for the purpose of employing draughtsmen and extra help in the drafting of bills.”³⁵ By taking this step to

improve the technical form of legislation the State of Wisconsin again set a fashion which other Commonwealths have not been slow to follow.

In 1909 the presiding officers of both houses of the New York legislature were directed to appoint as many competent persons as were needed (not to exceed three) "to draft bills, examine and revise proposed bills, and advise as to the consistency or other effect of proposed legislation." Later, the legislature created, and appropriated \$38,000 for the expenses of a legislative bill drafting commission, which began its labors in October, 1914. Opening the doors of their office for business on September 1st and working until their services are no longer needed, the commissioners perform the following tasks upon request: they draft or aid in drafting bills and resolutions and amendments; they advise as to the constitutionality, consistency, or effect of proposed measures; and they make researches and examinations relative to any subjects of proposed legislation. They also examine the general laws and report such amendments to the consolidated laws as they deem advisable.³⁶

Versed in political science, constitutional law, and administrative law, and experienced in the drafting of statutes, the director of the Indiana legislative reference department must be prepared to furnish to members of the General Assembly, and under their instruction, such assistance as may be demanded in the preparation and drafting of legislative bills. In Nebraska the bureau "may, upon request, aid and assist the members of the legislature and the executive department as to bills, resolutions and measures, drafting the same into proper form".³⁷

Other States which have bill drafting bureaus or of-

fices are the following: California, Illinois, Michigan, New Hampshire, Ohio, Pennsylvania, South Dakota, Texas, Vermont, Virginia, New Jersey, Arizona, and Massachusetts. It is interesting to note that even the bills initiated by the voters in Ohio and California are submitted to the official draftsmen for scrutiny.³⁸

It is evident that a nation-wide movement toward better bill-drafting is under way. Impressed by the earnest and sincere recommendations of a committee of scholarly members, the American Bar Association has since 1913 annually emphasized the need of State bill-drafters trained in the work of statute making, not merely trained in the Common Law, in the belief that the "establishment of drafting bureaus by state after state will be perhaps the most potent agency in creating high and uniform standards, provided they are permitted to develop and render service in accordance with the importance of their functions."³⁹ A report urging the preparation of a harmonious body of principles to be observed in drafting legislation was adopted by the American Bar Association and later by the American Political Science Association, and a tentative draft of a topical plan for instructions to legislative draftsmen and for model clauses for constantly recurring provisions and problems in statutes was agreed upon. Since then five parts of the proposed legislative manual or code of suggestions have been prepared — in 1914 topics I and XI relative to the "Language and Arrangement of Statutes" and "Provisions for Adoptive Acts"; in 1915 topics on "Administrative Regulations" and "Penalties"; and in 1916 a tentative treatment of "Provisions for Licensing or Certification". This work has been undertaken because there is no "book in the English language in the light of administrative and ju-

dicial experience, on legal ways and means by which a given legislative policy can best be rendered effective." The Bar Association is prepared to devote several years to the preparation of this manual.⁴⁰

A glance back over the years of American legislative history reveals real progress in the improvement of statute law-making. More than thirty States have demonstrated the usefulness and economy of legislative reference libraries — nearly twenty have made provision for the services of persons skilled in the use of words.⁴¹ It has taken Americans a long time to learn that there is any such thing as the science of legislation and that their public servants in the legislature have not been educated for the task of enunciating laws. Legislators who are not skilled in the use of accurate expression may, indeed, "defeat the most solemn promises of party platforms, or the most carefully planned of sage policies and may plague unmercifully the entire Bar of a state or nation."⁴² Slowly the idea has gained ground that legislation may be made "more comprehensive in language and more logical in form" by the use of expert draftsmen. Accordingly, as shown by the bill-drafting bureaus which have been established, expert draftsmen are coming into their own and legislators are taking advantage of their services: in fact, legislatures have shown a willingness to listen to expert advice and guidance whenever they have personal confidence in those who offer it. There need be no fear of experts who are accountable to the people's representatives at all times and whose acts are always open to scrutiny. The only experts who menace democratic government are men whose labors never see the light of day and whose influence is secret and invisible.

III

BILL-DRAFTING IN IOWA

FOR nearly eighty years laws have been piling up in Iowa — recently, indeed, at a tremendous rate. To anyone who concerns himself about the final form of these acts of the legislature it is of special interest to study their genealogy or ancestry — in other words, their beginnings. Despite the fragmentary written record it will be found that of the thousands of bills prepared and introduced very many were fathered and drafted by private persons and sponsored by members of the General Assembly. All other bills — a considerable proportion — come from the pens of the legislators.

In the early years when life in Iowa was chiefly agricultural and the relations of people in society were extremely simple, such statutes as were needed might well have been drafted by members of the legislature; but as conditions developed in complexity groups of persons, official and unofficial, interested in special fields of activity obtained the services of lawyers and others to express their desires in writing or in the form of bills ready for introduction in the legislature. It is quite clear that of the hundreds of laws now inscribed upon the pages of the statute book the “legislative fathers” were by no means always the “natural fathers”, and a brief historical review of the sources of bills formulated in Iowa will reveal the great variety of origin and of draftsmanship.

IOWA STATUTES MODELED UPON THE LAWS OF OTHER STATES

It has been said that the legislature itself originates comparatively few laws. Thus one writer declares that legislatures "shun originality; they are more inclined to copy enactments from other states, and really new departures in legislative experiments, original solutions of legislative problems, are mostly suggested by active men or organizations outside the legislative bodies."⁴³ How far Iowa legislators have depended upon the statutory enactments of other States in the making of laws it is impossible to state, but instances of adoption are by no means lacking.

In the days of the Territorial government in Iowa the legislature practically took over the entire Michigan school law, the Ohio statute on township government, and Ohio and Wisconsin road legislation. In later years Ohio school laws formed the basis of the present-day Iowa school system.⁴⁴ The Iowa civil practice act of 1860 owes its origin to several foreign sources. To England, New York, Kentucky, Massachusetts, Ohio, and to every State which had adopted the new system of procedure Iowa draftsmen were largely indebted, taking advantage also, as they said, of court decisions involving the laws of sister Commonwealths. The draftsmen asserted what many others must have had in mind: "It were a prouder office to create an act, but it is a safer one to imitate."⁴⁵ Indeed, a comparison of such Iowa laws as the pure food acts, the workmen's compensation act, the "blue sky law", the vasectomy act with similar legislation elsewhere quickly reveals how largely the statute books of other States and even of foreign countries pass current in Iowa. It need hardly be added that the danger in the practice of imitation lies in the fact that the defects of

laws in one State may be copied and perpetuated in another, and that laws adapted to conditions in one jurisdiction may be ill adapted to the needs of a people in another jurisdiction.

BILL-DRAFTING BY JUDGES

That the First Legislative Assembly of the Territory of Iowa recognized the difficulties attending the business of legislation was shown when both houses resolved that the judges of the Supreme Court should be requested to furnish such bills as would in their opinion form a proper code of jurisprudence for Iowa, and regulate the practice of the courts. Chief Justice Charles Mason soon drafted and presented a bill for the regulation of criminal procedure, and the whole court submitted drafts of bills for acts of which the following are typical:

An Act relating to information in the nature of Quo Warranto, and regulating the mode of proceeding therein.

An Act to prevent trespass upon lands.

An Act in relation to bonds and other securities.

An Act to allow and regulate the action of waste.

Later the legislature passed resolutions that Justices Charles Mason, Thomas S. Wilson, and Joseph Williams should each be allowed the sum of three dollars per day for the time during which they were employed as draftsmen. Although one can not say how many of the statutes in *The Old Blue Book* were penned by the judges, there is little doubt but that the oft-asserted excellence of the contents of that volume may be ascribed in large part to their efforts.⁴⁶

Save as members of code commissions judges appear not to have been called upon again to serve as draftsmen

— a proposition in 1842 requiring them to revise and compile the laws being lost.⁴⁷ By a provision of the *Code of 1851* it was made the duty of the judges of the supreme and district courts to report to the General Assembly all omissions, discrepancies, or other imperfections of the law that came under their observation.⁴⁸ The Commission of Legal Inquiry — which came into existence in 1860 and to which it was recommended that members of the Supreme Court should be appointed — made its first report to the General Assembly in 1870, declaring that although notices had been published in the newspapers of the State asking judges and lawyers to report defects in the laws no response whatever had been elicited from that source.⁴⁹

It is interesting to note, moreover, that in 1887 the district judges of the State assembled in the Supreme Court room in the State capitol and drew up rules of practice for the government of their courts, and that these rules were later incorporated in the *Code of 1897*.⁵⁰ Upon the invitation of Governor Larrabee most of the judges suggested amendments to the statutes; and in 1898 Chief Justice Horace E. Deemer and five district judges framed uniform rules and regulations relative to the assessment and collection of the collateral inheritance tax — rules which were later enacted into law.⁵¹ Judges who have taken an active part in the work of the State Bar Association have for many years past been a fruitful source of suggestions for the improvement of Iowa statute law.

BILL-DRAFTING BY LEGISLATIVE COMMITTEES

Although the services of legislative committees have been confined largely to the consideration, amendment, and remolding of bills submitted to them, instances are

not wanting to show that they have been requested and even instructed to draft bills on many subjects. As early as 1838, although the legislature was ineffectually urged to select a committee to draft and revise a code of laws for the Territory of Iowa, special committees of three or five members were appointed to draft measures covering the following matters: the organization of the Legislative Assembly and the compensation of its officers, the organization of probate courts, the definition of the duties and powers of executors and administrators, and the establishment of certain Territorial roads. Indeed, it was customary in those years for members to ask leave to introduce bills bearing certain titles; and when leave was granted, the requesting member was usually made chairman of a committee appointed to prepare the bill.⁵² Accordingly measures were framed with titles such as the following:

A bill to locate and establish a territorial road from Keokuk on the Mississippi river, to Iowa city, on the Des Moines river.

A bill fixing the time for the annual meeting of the Legislative Assembly of Iowa.

A bill concerning notaries public.

A bill in relation to the appointment and duties of sheriffs.

A bill concerning guardians, apprentices, orphans.

A bill to prevent imposition from the existence of lotteries in this Territory.

A bill to provide for the burial of dead bodies found on board ships or other vessels.

A bill concerning free negroes, mulattoes, servants, and slaves.

A bill to provide for the support of illegitimate children, and for other purposes.

In 1848 the General Assembly passed a resolution calling for the appointment of a committee of three to draft and remodel the probate code at as early a date as practicable. Similarly, by resolution it was made the duty of special committees to report bills on the following matters: the prohibition of the manufacture and sale of intoxicating liquors, the compensation of State and county officers, estray animals, State printing, the jurisdiction of the county court in civil, criminal, and probate matters, the protection of life and property on the southern State boundary in 1862, the regulation of the courts, the relief of the Supreme Court, a State monument on the battlefield of Shiloh, and the adjustment of existing statutes in conformity with the biennial elections law.

In some instances special committees have been appointed to redraft bills already introduced. A good example of this practice is taken from the session of 1915 when a bill declaring telephone companies common carriers and placing them under the Board of Railroad Commissioners underwent so many amendments in the House of Representatives that a new draft became absolutely imperative.⁶³

Standing committees of the legislature have oftentimes been ordered to consider the expediency of legislation on specified matters and to report bills on subjects specially referred to them. For example, the committee on the judiciary was instructed to bring in a bill to authorize the Legislative Assembly to punish for contempt and to privilege the members from arrest, and also "to enquire if the present law upon masters and apprentices cannot be so amended as to remedy the evils, if possible, of desertion of apprentices after serving a few months, where there are no indentures between the

parties.”⁶⁴ The same committee has frequently been called upon to formulate bills on subjects such as the following: the circulation of foreign bank bills in the State of Iowa; court costs; the protection of laborers; treason; the abolition of the county board of supervisors and the creation of a board of commissioners; the registration of births, deaths, and marriages; and the definition and punishment of usury. Indeed, this particular committee has in recent years frequently been overburdened with bill-drafting duties.

The committee on ways and means, moreover, was instructed to report bills on the taxation and assessment of real and personal property, the sale of real estate for delinquent taxes, and amendments of the revenue law. To the committee of agriculture was assigned the task of drafting a statute fixing the number of cubic feet in a perch of mason work. The drafting of a bill to provide for the leasing of the penitentiary fell to the committee on public buildings. The committee on new counties and the committee on roads were also called on to frame bills. The committee on finance was ordered to report a bill to compensate the members and officers of the convention which framed the first State Constitution; and the committee on Territorial affairs was to bring in a bill or report on the expediency of passing a law submitting the Constitution to the voters. The framing of a bill to provide for the election of a superintendent of public instruction and to define his duties was turned over to the committee on schools; and to the committee on elections was delegated the preparation of bills relative to voting by Iowa soldiers in the Civil War, the registration of voters, and the election of State printer, State binder, and warden of the penitentiary. Again, the committee on

railroads was instructed to draft a bill regulating and fixing rates of fare and freight and taxing railroad property, as well as a bill for the election of a railroad commission which should fix and publish maximum freight rates in the State of Iowa.⁵⁵

Instances of committee participation in bill-drafting have perhaps been needlessly multiplied; but despite their frequency committee drafts have not been numerous when compared with the whole number of bills introduced in the legislature — especially in the last thirty years.

Occasionally special joint committees of both houses have inquired into such matters as “draughting a probate law”, and as in recent years preparing joint resolutions on extra help at each session of the legislature.⁵⁶ In 1848 the two standing committees on common schools were instructed to confer and submit a joint report and bill for the organization of a common school system. To the committees on the judiciary likewise fell the task of reporting without delay, according to principles indicated, a bill for an act creating an additional court of original jurisdiction in the counties. They drafted a bill for an act relative to the adoption of the *Code of 1873*. The Iowa soldiers’ and sailors’ monument became the subject of a bill to be prepared by joint committee in 1896. Established by law in 1900 and directed to revise and codify all the special assessment laws and such other laws in relation to the government of municipal corporations as might be deemed necessary and expedient, the municipal code committee in 1902 made its report to the General Assembly in the form of a bill.⁵⁷ Furthermore, besides the joint committee preparation of bills in 1906 relative to the State’s educational institutions and reformatory, it appears that in 1915 the joint committee on retrench-

ment and reform reported drafts of ten bills and two resolutions for the reorganization of State government in Iowa.⁵⁸

In concluding this brief statement on committee activity in the formulation of bills, one other matter should not be overlooked. During practically the whole period of Iowa history the legislature has from time to time provided and paid for legislative investigations into various State and private activities, not with a view to the improvement of the draftsmanship of statutes but for the purpose of crystallizing subject-matter for statutes. Accordingly, legislative committees have been appointed at various times to report the facts which should constitute the basis for intelligent law-making. Thus, the affairs of the penitentiary and of banking and improvement corporations were looked into; and special investigating and visiting committees have reported their findings relative to the State College of Agriculture and Mechanic Arts, the State University, the State Teachers' College, and other State institutions. Committees have also investigated and reported upon various locations in the State for the establishment of such institutions as the Soldiers' Home and the State Colony for Epileptics. Likewise, one may be sure that the information discovered by committees of legislators who attended the "Beef and Pork Combine" Convention at St. Louis or studied the indeterminate sentence at Elmira,⁵⁹ if not actually used in drafting bills, nevertheless afforded an insight into conditions not understood before.

Indeed, it may be said that the investigations of all legislative committees are bound to exert an influence upon the writing of laws, since the draftsman is enabled to proceed deliberately in the light of the facts, to draw

up the kind of legislation that is needed, and thus to prevent the evils of hasty and ill-considered legislation. While these investigating committees have in general simply supplied the legislature with reports, their usefulness could be greatly enhanced by requiring them to draft the necessary law. With an intimate knowledge of the fundamental facts, committeemen may, by getting their heads together, study and formulate drafts of the proper policies for enactment into law by the legislature, as was done by the joint committee on retrenchment and reform in 1915.

BILL-DRAFTING BY COMMISSIONS

Not a few commissions have served the people of Iowa in helping to put proposed laws into satisfactory shape. As early as 1842 the legislation contained in Territorial statute books was submitted to a joint committee of the legislature for revision and compilation.⁶⁰ This task naturally involved much drafting and redrafting; and so bills were introduced, for example, on such subjects as change of venue in civil and criminal cases, the duties of county surveyors, interest on money, divorce and alimony, the limitation of actions and avoidance of vexatious lawsuits, and evidence by the oath of parties. The work of revision by members of the legislature who were not expert in the law nor acquainted with its defects in practice could hardly have been thorough, especially since a critical inspection of the statutes was rendered difficult in the midst of ordinary legislative bustle.

When, within a short period of years, confusion in the law became so apparent that the State was urged to avail itself of the best legal talent for the purpose of effecting a general revision, the General Assembly which convened early in 1848 provided for the appointment of commis-

sioners "to draft, revise and arrange a Code of Laws". The three men appointed on the commission — former Supreme Court Justice Charles Mason, William G. Woodward, a lawyer, and Stephen Hempstead, a legislator — were also delegated to prepare, examine, and consider bills in session. Not being urged to hasty action, the commissioners went about their business with much labor and extensive research for nearly three years, and finally reported a code of laws which the General Assembly in 1851 adopted with few changes as "An Act for revising and consolidating the general statutes of the State of Iowa." In general the draftsmanship exemplified by the *Code of 1851* is marked by simplicity, directness, and intelligibility of expression.⁶¹

The code commission provided by law in 1858 consisted of Charles Ben Darwin and Winslow T. Barker — two lawyers — and William Smyth, a former district judge. From time to time they submitted drafts of bills intended for incorporation into the new code when completed and some of these bills were immediately passed by overwhelming majorities. Each commissioner specially restricted himself to a large single piece of drafting, but the work of each was gone over in joint session: thus the criminal code, the civil practice act, and the chancery act — all passed in 1860 — may be accounted for. On the whole, however, they did their work so hastily and made so few verbal changes in old statutes that their *Revision of 1860* presented no unity of plan or of purpose.⁶²

The code commission appointed in 1870 was instructed not only to revise and arrange Iowa laws but also to rewrite wherever necessary by omitting all parts repealed or obsolete, inserting amendments, transposing words and sentences, and changing the phraseology by the omis-

sion or the insertion of words and sentences. The men who made up the commission — William H. Seevers, a lawyer and former district judge, William J. Knight, also a lawyer, and William G. Hammond, Chancellor of the Law Department of the State University — began their duties early in the year 1871 and in the autumn of 1871 reported upon their labors. In the short time at their disposal they had aimed at precision, clearness, and brevity of language, and to that end each commissioner had taken upon himself a special piece of work. The General Assembly of 1872, however, determined not to adopt their recommendations but instructed them to prepare the code in the form of bills, with proposed amendments to existing laws printed in italics. Accordingly, the code which was presented in 1873 as twenty-six bills under separate titles was adopted after a careful review by the legislature.⁶³

The duties of the code commission provided by law in 1894 were the same as those prescribed in 1870, including the power to “make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible.” Horace S. Winslow, Charles Baker, John Y. Stone, Horatio F. Dale, and Emlin McClain — three of whom were engaged in the practice of the law; one had been a district judge; another had served in the legislature; and the last was Chancellor of the Law Department of the State University — reported the proposed code in the form of twenty-six bills as in 1873, having underscored all new and rewritten portions, and these bills became the basis of the *Code of 1897*.⁶⁴ (For a further discussion of the work of these code commissions see Mr. Clark’s paper on *The Codification of Statute Law in Iowa* in this volume.)

The code commissions are not the only agencies of this character which have had a hand in the making and improvement of the statute law in Iowa. The Commission of Legal Inquiry established in 1860 did not make reports to the General Assembly at each regular session as required by law until the year 1870, but in that year it submitted to the Senate seven bills amendatory of existing law.⁶⁵ Although this commission of men presumably qualified to draft and report improvements in the statutes was eventually discontinued, it was neither the first nor the last time that the legislature sought the aid of experts either in formulating statutes or in stating the policies that should be put in statutory garb.

In the past quarter of a century the General Assembly, recognizing the complexity of human relations growing out of railways, industries, banks, taxation, and public service companies, has been forced to rely upon the information and even drafts of bills obtained from specially appointed commissions. Precedents for this course of action can be found as far back in Iowa history as 1839 when the first Iowa school commission was appointed and its chairman, Governor Robert Lucas, recommended the adoption of the Michigan statute on common schools. Again, the second school commission consisting of Horace Mann (an Ohio schoolmaster), Amos Dean, and F. E. Bissell in 1856 submitted the draft of a bill establishing a complete State educational system: the main features and possibly the exact language in many parts of their bill were incorporated in bills which were later enacted into law and virtually constitute the school law of Iowa to-day. In 1892 a commission was appointed to "studiously and carefully examine the revenue and taxation laws of the state and report necessary and desirable changes" to the

next General Assembly, a task which it was recognized would require much re-writing, revising, and reforming of the existing law. The commissioners, accordingly, drafted a forty-page bill for an act to revise and amend the laws of the State on the subjects of revenue and taxation.⁶⁶

In 1906 a legislative commission was created to examine the subject of insurance and the practices of insurance companies doing business in Iowa, to revise the insurance laws of the State, and to report such recommendations as were deemed advisable. Among other things it proposed two bills relative to mutual fire, tornado, and hail storm assessment insurance associations, and also presented a standard fire insurance policy. Moreover, the educational commission created in 1907 to rearrange, revise, and codify the laws relative to the public schools and to recommend additional needed legislation, submitted the result of their labors in the form of "A bill for an act to revise, amend and codify the statutes in relation to the public schools"—the draft of which in two hundred and thirty-three sections covers sixty-six printed pages.⁶⁷

The special tax commission appointed in 1911 examined the tax assessment, tax levy, and tax collection laws of Iowa and other States and reported a lengthy bill of fifty-four pages intended to carry its findings into effect. This bill, like the bills presented by other commissions, was introduced in both houses of the General Assembly, but met with no favorable response. The employers' liability commission selected in 1911 met with better success: a majority of the commissioners proposed a bill for an act to provide, secure, and pay compensation to employees who sustain personal injury while in the line of duty; while the minority drafted a bill of seven pages.

The legislature virtually enacted the former into law.⁶⁸ There can be no doubt that if a State wishes to achieve political, social, and economic reforms such as are illustrated by the workmen's compensation act, the technical knowledge of details must be secured through the co-operation of expert investigators in many different fields.

BILLS DRAFTED BY AGENCIES OUTSIDE OF THE STATE

Many excellent bills enacted by the General Assembly of Iowa have originated outside of the State. An early instance was the draft of a bill transmitted by the Auditor of State to Governor Carpenter on the subject of life and fire insurance: it represented in the main the measure prepared by the National Convention of State Insurance Officers for the purpose of securing uniform legislation in the United States. The three delegates sent to the meeting of commissioners appointed by various States to consider and recommend for adoption uniform laws on subjects concerning which uniformity was desirable returned with recommendations which were embodied in the code proposed by the commission created in 1894. To such a source, for instance, may be ascribed several sections of the *Code of 1897* relative to the conveyance of real estate and the regulation of trade and commerce.⁶⁹

The State of Iowa has further encouraged uniformity by placing upon the statute book the negotiable instruments act, the bills of lading act, and the warehouse receipts act — all measures fathered by the national Conference of Commissioners on Uniform State Laws — “the body in which the most careful professional thought is brought to bear upon the discussion of legislative projects.”⁷⁰

The draft for a uniform sales act also found its way

into the General Assembly of 1915 through the efforts of the committee on uniform state laws of the Iowa State Bar Association. In 1915, moreover, the legislature of Iowa provided for the appointment of a commission to confer with a similar Minnesota commission to draft a bill for the purpose of effecting coöperation in regard to the drainage of lands situated along the northern boundary of the State.⁷¹ Likewise, the National Child Labor Committee sent an agent to Iowa to assist in drafting and securing the passage of the child labor law of 1915.

BILL-DRAFTING BY STATE OFFICERS

From the days of the Territory when Governor Lucas presented the Michigan school law for passage by the legislature down to the present time State officers have occasionally drafted bills to facilitate the work of enacting proper legislation.

There is no way of telling how many Iowa statutes have been submitted for enactment by men in executive offices. Interested in the better administration of the State's business and presumably well acquainted with the problems growing out of the work of their offices, they were in a position to offer suggestions or draft bills. A few instances will suffice to make this fact clear. In 1860 the committee on schools and the State University in the House of Representatives requested the Secretary of the Board of Education to prepare bills on certain subjects and later received from him the following:

A bill amendatory of the present law, providing for the collection of taxes when assessed by sub-districts, and adapting the law to the Supervisor system.

A bill in which the township system is abolished, and an independent district system instituted in lieu thereof.

A bill providing for a meeting of the Board of Education on the first Monday of December next.⁷²

In 1870 the committee on schools in the Senate submitted a bill which the Superintendent of Public Instruction had framed by re-writing the school laws of the State, and the Senate invited him to address the members of the General Assembly with reference to the revision which he proposed. Without citing further instances it is apparent that legislative committees in Iowa have not neglected to avail themselves of the scientific knowledge of specialists.⁷³

The reports of State officers abound in recommendations relative to needed legislation. While in the nature of the case these suggestions have always been more or less partial, the legislature has recognized their value as affording at least good ground-work for the drafting of bills. Not only have the Governors of Iowa in their messages offered the General Assembly excellent and concise information as to the conditions and needs of the State, but they have sometimes gone further. Thus Governor Cummins pointed out the fact that the United States government could not acquire sites for Federal buildings in Iowa and submitted to the General Assembly the draft of a bill which had met the approval of the department of justice. When a resident of Iowa murdered a person in South Dakota by means of poison delivered as mail in that State and the law of Iowa did not empower the chief executive to extradite under such circumstances, Governor Cummins recommended the passage of a bill which he had requested the Attorney General to prepare.⁷⁴

For many years members of the legislature have been in the habit of resorting to the office of the Attorney General for aid in the drafting of bills. Although the Attor-

ney General himself is too heavily engaged in the performance of his regular duties to take any large share in bill-drafting, one or two special assistants do considerable work of that sort during the session of the General Assembly, when the needs of the members are most pressing. Bills drafted under such circumstances neither represent the services of State officers who have studied the contents of the proposed measures nor do they reflect any special skill in writing.

Furthermore, for many years Mr. A. J. Small, law librarian in the State Library, has assisted in the drafting of, or has prepared entirely, a number of bills at each session of the General Assembly.

BILL-DRAFTING BY LAWYERS

Anyone who investigates the complexion of the membership of the General Assembly will discover that as a rule farmers outnumber lawyers, merchants, and other classes in the House of Representatives, while lawyers outnumber merchants and farmers in the Senate. It is hardly necessary to state that of these three large groups the farmers and the merchants are neither by training nor experience especially qualified for bill-drafting. On the other hand, the members who have studied and practiced law and might therefore be expected to possess the qualities that draftsmen ought to have are not, as a plain matter of fact, especially expert in formulating statutes.⁷⁵

Moreover, lawyer-members are sometimes accused by their own profession of being primarily responsible for the verbiage, repetition, bad grammar, and contradictions which appear in the laws that reach the statute book. At the same time it is admitted that the training of lawyer-legislators at the bar is of great value; leader-

ship in both houses usually devolves upon them; they are perhaps the most representative profession in the community; and owing to their constant use of statutes in the practice of law, they have unequalled opportunities to observe the workings and learn the defects and shortcomings of statutes. These reasons perhaps explain the virtual monopolization by lawyers of the committees on the judiciary which exercise so much influence in determining the form and language of bills.⁷⁶

In England lawyers have long been influential in matters of legislation. Jeremy Bentham frequently made them the object of his vitriolic and devouring wrath: they guided the hands of legislators and their purpose was, to quote a characteristic passage from Bentham's writings, "the making of power, influence, and profit for themselves: i. e. *the making of business* — in their case the natural, and naturally the sole, parent of that amiable progeny. So accordingly they ordered matters, that what they had ordained to be written, none but a lawyer could be supposed to be, indeed scarce any could be, competent to write."⁷⁷

John Austin also had to confess that "statutes, made with great deliberation and by learned and judicious lawyers, have been expressed so obscurely or have been constructed so inaptly that decisions interpreting the sense of these provisions . . . have been of necessity heaped upon them by the courts of justice." Great lawyers with all their acuteness and technical acquaintance with the laws of their State require a different sort of cleverness when they essay to prepare bills for the legislature. The conclusion appears to be borne out in experience that the training of a lawyer, while indispensable, is entirely inadequate for the task of bill-draft-

ing. Accordingly, some reason underlies the suggestion that the efforts now being made in the United States to improve the quality of statutes might well "be supplemented by the efforts of the law schools in instructing the profession, as prospective legislators, in the principles of proper drafting for logic of arrangement and clarity of expression".⁷⁸

THE IOWA STATE BAR ASSOCIATION AND OTHER VOLUNTARY ORGANIZATIONS

One of the objects of the Iowa State Bar Association is to promote reform in the law. To this end many of its committees not only have had measures introduced in the General Assembly, but also have urged matters upon the attention of the legislature less formally. The committee on legal education and admission to the bar had much to do with raising the statutory requirements relative to the practice of law. The committee on the revision of special assessment laws and other laws relating to municipal corporations prepared drafts of bills which were endorsed by the Association and referred to the municipal code committee of the legislature. In 1905 the section on taxation proposed a bill to exempt moneys and credits from taxation. The committee on uniform State laws in 1914 urged the submission of the uniform sales act to the legislature, and a year later reported that the General Assembly had not seen fit to adopt the act. The special committee on selection of jurors drafted a jury commission bill which failed to pass the legislature in 1915.⁷⁹

The committee on law reform has since 1896 made an annual report to the Association recommending legislation on all sorts of subjects, and their suggestions have frequently been enacted into law. In 1902 this committee

congratulated the Association upon the enactment of bills which embodied some of its principal recommendations. It also proposed a eugenics law for the regulation of marriage. Of the bills submitted to the legislature in 1907 one for the punishment of desertion of wife and family was enacted into law, while all others failed of passage because they did not receive proper attention. The committee urged, therefore, that certain members of the Association should be delegated to have general charge of these matters at the next session of the legislature and see to it that the recommendations were crystallized into law. In 1910 the committee presented a jury commission bill. All such activity by the lawyers and the judges whose business it is to know the law, to explain the law, and to apply the law clearly demonstrates that they believe in using their influence to see that the law is well made.

What the State Bar Association has done for the law in a general way other organizations too numerous to mention have sought to accomplish in their own special fields of endeavor. One need not write an exhaustive account of each of them to prove that they have exerted a powerful and legitimate influence tending toward the making and improvement of statute law in Iowa. Some of the most important of these volunteer organizations are the State Teachers' Association, the State Conference of Charities and Correction, the State Federation of Labor, the State Dental Society, the State Medical Association, the Woman's Christian Temperance Union, the Iowa Equal Suffrage Association, the Iowa League of Municipalities, and the State Bankers' Association.

LEGISLATIVE REFERENCE WORK OF THE STATE LIBRARY

Territorial legislators were early impressed by the fact that if they were to be most serviceable to the people they should have to make frequent use of books, and so they asked for the laws of Wisconsin, Michigan, and other States, and also appointed a committee "to borrow from the gentlemen of the bar . . . as well as other citizens, such books as may be useful to the different standing committees in drafting laws". Soon they provided for a library and the appointment of a librarian, thereby establishing in a small way what has come to be the State Library⁸⁰—an excellent workshop for the bill drafter, the law-maker, and research students in general. Gradually, by purchase and exchange, there has accumulated in the State Library a special collection of books known as the Law Library, which is one of the most complete in the United States. In it can be found the statutes, codes, and law reports of the States of the Union, in addition to other works of a cognate kind, foreign and domestic.⁸¹

Although the Iowa legislator was thus long enabled to obtain information on subjects of interest to him, he was left so much to his own resources that the possibilities of the State Library were never exploited to the fullest extent. In recent years, however, so many heavy demands have been made upon members of the legislature that they have gradually come to realize the need of special library assistance as a means of obtaining light for their path. In 1907, therefore, they appropriated a small sum of money to the State Librarian for "legislative references to and indexes of current legislation" and \$1000 for a legislative and general reference assistant. Two years later, when this service had demonstrated its

value to the General Assembly, it was proposed, in a bill drawn by Professor Benj. F. Shambaugh of the State University of Iowa, that the board of trustees of the State Library and Historical Department should be directed to organize and maintain in connection with the Historical Department a Legislative Reference Bureau; but the bill of which this provision formed a part, as well as the substitute bill reported by the House committee on appropriations and passed by the House, failed of enactment.⁸² To Justice Horace E. Deemer belongs the credit of consistently advocating for the past ten years the inestimable advantage of having in this State an institution like those which have been developed beyond the experimental stage in other jurisdictions.

Again, in the year 1911, under the supervision of Mr. A. J. Small, law librarian in the State Library, the legislative reference work was commended for the "study of new laws and in securing current information upon any subjects pertaining to the affairs of the different states, and especially legislation proposed or enacted by them." Accordingly, the General Assembly appropriated the sum of \$6000 annually "for the use of the law department and legislative reference bureau". In 1913 and 1915 Senate and House bills for the creation of a law and legislative reference bureau of the State Library failed to pass the General Assembly.

In conclusion it may be stated that the Iowa State Bar Association in 1916 expressed its approval of the semi-officially recognized legislative reference department and recommended its complete establishment and greater financial support by the legislature. The Association realized that only a fully organized institution of that kind can be depended upon not only to gather, sift,

and critically examine the facts on which laws ought to be based, but also to ascertain what subjects other States and countries have legislated upon and what has been the practical working of the laws they have enacted.⁶³

LEGISLATIVE RESEARCH

It was in 1909 at a meeting of the Mississippi Valley Historical Association that the Superintendent of the State Historical Society of Iowa first suggested the use of historical research as an aid to legislation. In a brief address on *Applied History* he pointed out that legislative reference departments or bureaus had emphasized current information to the neglect of historical developments. While proposals for legislation in the form of bills was not a function of the State Historical Society of Iowa, it was announced that the program of the Society would include the collection, compilation, and publication of "historical data which may be applied in current legislation". This announcement was fulfilled by the appearance of the *Iowa Economic History Series* in 1910, the *Applied History Series* in 1912 and the *Social History Series* in 1915. The contents of these series of publications — especially the monographs in the *Applied History* volumes — may well constitute the groundwork for statutes on the subjects treated.

Thus the State Historical Society of Iowa through its researches offers to the legislators of this State scientific knowledge of history and experience for the solution of at least some of the present problems of human betterment. By sound and intelligent methods of investigation, analysis, and interpretation, the records of the past are viewed in connection with "the conditions of the present and the obvious needs of the immediate future to the end

that a rational program of progress may be outlined and followed in legislation and administration." This aid to legislators in the making of statutes has appropriately been designated "legislative research".

Much information acquired by careful, scientific research has thus been assembled in Iowa as a basis for constructive legislation along various political, economic, and social lines. It was no doubt in recognition of the impracticability of the legislator's engaging in this sort of work that the General Assembly in 1913 voted appropriations for the continuation of these research studies and their publication by the State Historical Society.⁸⁴ Thus Iowa legislators have been quick to appreciate the truth of the assertion of a noted critic who said: "No country has ever been able to fill its Legislatures with its wisest men, but every country may at least enable them to apply the best methods, and provide them with the amplest materials."⁸⁵

NEED OF A BILL-DRAFTING DEPARTMENT

During the past three sessions of the General Assembly there has been revealed a belief that mere legislative reference work and legislative research do not satisfy all the needs of the members of the legislature. In 1911 there was introduced in the House of Representatives and indefinitely postponed a bill for an act creating a commission of two lawyers of general experience and high legal attainments and the Attorney General to draft, examine, and supervise and assist in the preparation of bills for the General Assembly. Two years later a bill for the creation of a Law and Legislative Reference Department authorized the director to employ for each session one or more competent persons who should, at the request of

members of the General Assembly, submit outlines of proposed measures, and draft bills under the director's supervision. Another bill on the same subject met with a better reception in the Senate in 1915: although it was recommended for indefinite postponement, on request and by unanimous consent it was placed on the calendar and later referred to a committee.⁸⁶

Under existing conditions no department of State government is in greater need of expert assistance than the legislature in the baffling task of making laws. On the whole American legislative bodies have been rather indifferent to the problem of providing for skilled drafters of bills. The situation seems to indicate at least some truth in the statement that politics and government are the fields in which mankind has thus far made its greatest blunders: politics and government "remain to-day as they always have been the most lagging and impervious of the 'sciences', the most empirical and at the same time the most reactionary, the least illumined by the glow of big aims and comprehensive ideas." Bills are constantly introduced in the legislature and passed "exactly as prepared by some constituent with an ax to grind";⁸⁷ and so the imperfect bills which so often become statutes owe their existence largely to poor draftsmen. What proportion of the time of the courts is devoted to litigation caused by slovenly draftsmanship will probably never be known, but one may conjecture that it is neither slight nor insignificant. The members of the General Assembly may well know what they are driving at or what they want, but only men of training know how to state the matter effectively. It is plain, therefore, that even if the law-making initiative be left to the representatives of the people, the State very much needs trained law writers.

Several remedies have been suggested to prevent the sort of defects generally characteristic of statutes. For instance, it has been suggested that every State provide for "a permanent, paid parliamentary or legislative draftsman whose duty it shall be to recast, at least in matters of style and arrangement, all acts before they are passed to be engrossed."⁸⁸ Again, it has been suggested that a special committee or perhaps department should be instituted by which bills, after they pass committees, may be supervised and put into final working order, and later revised before they pass into law. That there should be some sort of clearing house for proposed legislation, more effective than the ordinary judiciary committees, seems quite apparent: a permanently organized commission "authorized to digest and correlate the laws and to permit no new law to come to final passage until its terms are thoroughly understood" would also serve a useful purpose.⁸⁹

Statutes of a general or public nature should be the product of many minds: if a bill deals with a large subject, the impersonality and impartiality of its authorship ought always to be an essential feature, and in such cases materials should be accumulated during a long course of experience and suggestions should be gathered from many quarters.⁹⁰ In any event the most thorough and complete drafting machinery that can be furnished a legislature is none too good. To that end skillful draftsmen should be at the service of the legislators to frame bills in the best possible manner before they are submitted to scrutiny, criticism, and amendment in committee or in the whole house. They should, moreover, be required to see that all amendments to bills are properly written; and finally, before the bill is enacted into law, they should carefully revise its language at the last stage.

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It may be urged that, inasmuch as nearly two-thirds of the bills introduced in the legislature fall by the wayside,⁹¹ the labor of expert draftsmen would be wasted upon the desert air. This is not necessarily true since bills that have suffered defeat many times, if sound in principle, have become laws later. But despite any loss it is believed that all the efforts of trained law writers toward perfecting the bills that do reach the statute book will more than repay the cost. They will not only save the legislator much time and untold worry but also "prevent that flood of amendments which inevitably follows the enactment of poorly worded statutes". Above all the careful and scientific drafting of bills will prevent subsequent wasteful litigation.⁹²

NOTES AND REFERENCES

¹ Ilbert's *The Mechanics of Law Making*, pp. 29, 96.

² Stimson's *Popular Law-making*, p. 365.

³ Wilberforce's *Statute Law*, pp. 2, 3; Lieber's *Legal and Political Hermeneutics*, pp. 13-16.

John C. Gray in his book entitled *The Nature and Sources of the Law*, p. 163, declares that "until the dealers in psychic forces succeed in making of thought transference a working controllable force (and the psychic transference of the thought of an artificial body must stagger the most advanced of the ghost hunters), the will of the legislature has to be expressed by words, spoken or written;" and thought never can be completely transferred, no matter how exactly it is expressed.

⁴ Wilberforce's *Statute Law*, pp. 3-5.

⁵ Quoted from Wilberforce's *Statute Law*, p. 4.

⁶ Lieber's *Legal and Political Hermeneutics*, pp. 16-20, 21, 24, 27.

Stephen Langton has been called "prince of all draftsmen" because he expressed Magna Charta in short and precise language. See Thring's *Practical Legislation*, p. 2; also Reinsch's *American Legislatures and Legislative Methods*, pp. 307, 308.

In an able address to the lawyers of Iowa, Judge Charles B. Elliott used the following words: "The Minnesota General Statutes of 1913 in one volume weighs eight pounds. Your Iowa code cannot be less in magnitude or less inconvenient in form. Is our law better because it weighs more or does it weigh more because its draftsmen are unable to analyze and condense material and express their ideas with precision?"—*Proceedings of the Iowa State Bar Association*, Vol. XXI, p. 128.

⁷ Stimson's *Popular Law-making*, pp. 361, 362. The Federal Income Tax Law also has aroused the severest kind of censure for its bunglesome arrangement and phraseology.

⁸ The decentralized responsibility for legislation in the United States as compared with the situation in England has often been adverted to: political parties are not accountable to the people either for the way in which they secure the election of legislators or for the policies which the legislators enact into law. See Jones's *Statute Law Making*, pp. 2-4.

⁹ Wilberforce's *Statute Law*, p. 6.

¹⁰ Kaiser's *Law, Legislative and Municipal Reference Libraries*, p. 69; Jones's *Statute Law Making*, pp. 12, 13; an editorial in *The Register and Leader* (Des Moines), April 16, 1913.

The payment of small salaries to legislators is one of the poorest investments which any State can make, because the continued service of the best qualified citizens is rendered impossible.— Jones's *Statute Law Making*, pp. 8, 9.

¹¹ Wilberforce's *Statute Law*, pp. 6, 7.

¹² *The Register and Leader* (Des Moines), April 16, 1913; Gray's *The Nature and Sources of the Law*, p. 165.

On account of defects which caused the Illinois Supreme Court to declare the primary election law unconstitutional, an extra session of the State legislature was required.— Reinsch's *American Legislatures and Legislative Methods*, p. 310.

¹³ *Proceedings of the American Bar Association*, 1914, p. 395.

What James Bryce says about English parliamentary procedure has a practical application to American conditions.— See his *Studies in History and Jurisprudence* (Oxford University Press), Vol. II, pp. 734–739.

¹⁴ Bryce's *Studies in History and Jurisprudence* (Oxford University Press), Vol. II, pp. 712, 713, 714, 718, 720, 725, 727, 729, 730.

Mr. Bryce notes that the tedious minuteness of English and American statutes, "if it grieves the scientific lawyer, is after all a laudable recognition and expression of that respect for personal liberty and jealousy of the action of the executive which have distinguished the English race on both sides of the Atlantic."

¹⁵ Craies's *Statute Law*, pp. 21, 22, 23; *Proceedings of the American Bar Association*, 1914, pp. 632, 633.

¹⁶ Bentham's *Works*, Vol. III, p. 232.

¹⁷ Craies's *Statute Law*, p. 27; Thring's *Practical Legislation*, pp. 4, 5; Ilbert's *Legislative Methods and Forms*, pp. 43–76.

¹⁸ Ilbert's *Legislative Methods and Forms*, pp. 84–90, 91, 213–219, 228; Ilbert's *The Mechanics of Law Making*, p. 20; *Columbia Law Review*, Vol. VIII, p. 160.

The system of bill-drafting and law-making in England still possesses defects which "do not always tend to clearness or accuracy of style, logical arrangement, or consistency, in literary composition."— Ilbert's *Legislative Methods and Forms*, pp. 229–236; Lowell's *The Government of England*, Vol. I, pp. 357–361.

¹⁹ Ilbert's *Legislative Methods and Forms*, pp. 227, 229.

²⁰ Ilbert's *The Mechanics of Law Making*, pp. 88, 114; Ilbert's *Legislative Methods and Forms*, p. 96; Craies's *Statute Law*, p. 32; Jones's *Statute Law Making*, pp. 127-129.

²¹ Ilbert's *Legislative Methods and Forms*, pp. 118, 179-184, 222; Ilbert's *The Mechanics of Law Making*, pp. 62-65; *Senate Documents*, 1st Session, 62nd Congress, No. 7, pp. 33, 34.

²² Ilbert's *Legislative Methods and Forms*, pp. 213, 223, 224; *Proceedings of the American Bar Association*, 1914, p. 636; Bryce's *University and Historical Addresses*, p. 94.

²³ *Proceedings of the American Bar Association*, 1914, p. 634.

The German Civil Code, "perhaps the greatest, and certainly one of the most carefully prepared, of all codifying measures," was produced by a commission of experts after many years of hard work and underwent not only effective criticism, but substantial alteration, in its passage through the Reichstag. It is said that the "principal German statutes, particularly the civil code, are published in cheap, popular and handy editions, and are found in hundreds of thousands of homes. The extraordinary sense of legality of the German people is not entirely unconnected with the intelligibility of their laws."—*Proceedings of the American Bar Association*, 1914, p. 640; Ilbert's *Legislative Methods and Forms*, p. 8.

²⁴ Ilbert's *The Mechanics of Law Making*, pp. 11, 12; Ilbert's *Legislative Methods and Forms*, p. 222.

The present tendency of State legislatures seems to favor the delegation of rule-making powers to administrative officers. This whole matter has been fully gone into by a special committee of the American Bar Association, and the reader is referred to their reports in *Proceedings of the American Bar Association*, 1914, p. 638, 1915, pp. 537-569. The words of Professor Ernst Freund may, however, be added: "There is then every reason why this subsidiary and technical detail of statute law should be determined in a uniform manner, i. e., should be standardized. We should consider it absurd if every statute were to create its own judicial procedure for the litigation of controversies arising under it; yet to a very considerable extent this is done with regard to penal provisions and the machinery of administration, at least in state as distinguished from federal legislation."—*The American Political Science Review*, Vol. X, p. 15.

²⁵ *Proceedings of the American Bar Association*, 1909, p. 818, 1913, p. 57.

²⁶ *United States Statutes at Large*, Vol. 38, pp. 463, 1005; *The American Political Science Review*, Vol. IX, pp. 545-548.

²⁷ Reinsch's *American Legislatures and Legislative Methods*, pp. 296, 297; Kaiser's *Law, Legislative and Municipal Reference Libraries*, pp. 68-233;

The Iowa Journal of History and Politics, Vol. VII, pp. 132-141; *Bulletin of the American Library Association*, Vol. III, pp. 296-298; *The American Political Science Review*, Vol. X, pp. 110-113.

²⁸ Jones's *Statute Law Making*, p. 306.

²⁹ Jones's *Statute Law Making*, p. 26.

³⁰ *The American Political Science Review*, Vol. IX, pp. 548, 549.

³¹ *Proceedings of the American Bar Association*, 1881, pp. 47-55, 1882, p. 305, 1885, p. 24, 1886, pp. 284, 285.

Other references to the need of improvement in legislation can be found in the *Proceedings of the American Bar Association*, 1887, p. 81, 1889, pp. 39, 40, 330, 331, 343, 1890, p. 40, 1896, pp. 41, 42, 1897, pp. 259, 260, 1902, pp. 398, 399, 1911, pp. 384, 385, 1912, pp. 63, 64.

³² *Proceedings of the American Bar Association*, 1897, pp. 259-261.

³³ Reinsch's *American Legislatures and Legislative Methods*, pp. 326-328.

³⁴ *Senate Documents*, 1st Session, 62nd Congress, No. 7, p. 29. This document contains much useful information on Legislative Reference Bureaus and bill-drafting agencies.

³⁵ Jones's *Statute Law Making*, p. 24; *Laws of Wisconsin*, 1907, Ch. 118; Kaiser's *Law, Legislative and Municipal Reference Libraries*, pp. 174-182. Urged on by Governor Philipp the Wisconsin legislature made an unsuccessful attempt to abolish the Legislative Reference Library.—See *The American Political Science Review*, Vol. X, p. 113.

³⁶ *Proceedings of the American Bar Association*, 1914, p. 678.

³⁷ *Proceedings of the American Bar Association*, 1914, p. 677, 1915, pp. 596-598; *Laws of Nebraska*, 1911, p. 312, 1915, p. 630.

³⁸ For more detailed information the reader is referred to the *Proceedings of the American Bar Association*, 1914, pp. 673-682, 1915, pp. 594-604, 1916, pp. 2, 3 of the report of the Special Committee on Legislative Drafting.

³⁹ *The American Political Science Review*, Vol. X, p. 18.

⁴⁰ *Proceedings of the American Bar Association*, 1913, p. 66, 1914, pp. 631, 632-673, 1915, pp. 536, 537-594, 1916, pp. 3-34 of the report of the Special Committee on Legislative Drafting.

⁴¹ *The American Political Science Review*, Vol. X, p. 111; Reinsch's *American Legislatures and Legislative Methods*, pp. 327, 328.

⁴² *Proceedings of the American Bar Association*, 1914, p. 837.

- ⁴³ Reinsch's *American Legislatures and Legislative Methods*, p. 275.
- ⁴⁴ Aurner's *History of Education in Iowa*, Vol. I, p. 37; Aurner's *History of Township Government in Iowa*, pp. 27-32, 35, 171-179; Brindley's *History of Road Legislation in Iowa*, pp. 54, 55.
- ⁴⁵ *Revision of 1860*, footnotes on pp. 446, 447, 449, 505, 533, 558, 568, 571, 689.
- ⁴⁶ *House Journal*, 1838-1839, pp. 20, 31, 33, 128, 129, 130, 132, 134, 145, 149, 194, 206; *Council Journal*, 1838-1839, pp. 41, 51, 52; *Laws of Iowa*, 1838-1839, p. 517; *Annals of Iowa* (Third Series), Vol. IV, pp. 595, 609.
- ⁴⁷ *Council Journal*, 1842-1843, pp. 27, 28.
- ⁴⁸ *Senate Journal*, 1852-1853, pp. 15, 82; *Code of 1851*, Sec. 1588.
- ⁴⁹ *Revision of 1860*, Sec. 2675; *Senate Journal*, 1870, p. 237.
- ⁵⁰ *Laws of Iowa*, 1886, p. 155; *The Iowa Journal of History and Politics*, Vol. XI, p. 426.
- ⁵¹ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 80, 81; *Laws of Iowa*, 1898, p. 28; *Code Supplement of 1907*, pp. 319-322; *Code Supplement of 1913*, Secs. 1481-a 25-1481-a 35.
- ⁵² *House Journal*, 1838-1839, pp. 21, 33, 45, 132, 133, 1839-1840, p. 29, 1840-1841, p. 39.
- ⁵³ *House Journal*, 1915, pp. 1221, 1861, 1862.
- ⁵⁴ *House Journal*, 1845-1846, p. 45.
- ⁵⁵ *House Journal*, 1872, p. 76; *Senate Journal*, 1888, p. 168.
- ⁵⁶ *House Journal*, 1913, p. 119.
- ⁵⁷ *Laws of Iowa*, 1900, p. 128; *Senate Journal*, 1902, pp. 259, 260.
- ⁵⁸ *Senate Journal*, 1906, pp. 346, 462, 1915, pp. 443-459.
- ⁵⁹ *Laws of Iowa*, 1890, p. 90, 1904, p. 211.
- ⁶⁰ *The Iowa Journal of History and Politics*, Vol. IX, pp. 515-524.
- ⁶¹ *The Iowa Journal of History and Politics*, Vol. X, pp. 4, 10-12, 35, 43, 68, 69.
- ⁶² *The Iowa Journal of History and Politics*, Vol. X, pp. 316, 321, 324, 325, 328, 361; *House Journal*, 1858, pp. 458, 477, 478.
- ⁶³ *The Iowa Journal of History and Politics*, Vol. XI, pp. 176, 177, 179-181, 183, 198, 203, 220.
- ⁶⁴ *The Iowa Journal of History and Politics*, Vol. XI, pp. 368, 375, 377, 381.

⁶⁵ *Senate Journal*, 1870, pp. 237, 359, 375, 459-461.

⁶⁶ *House Journal*, 1838-1839, p. 171; Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 99, 100; Aurner's *History of Education in Iowa*, Vol. I, pp. 30, 31; *Laws of Iowa*, 1892, p. 100; *Report of the Revenue Commission*, 1893, pp. 17-56.

⁶⁷ *Laws of Iowa*, 1906, pp. 143, 144; *Report of the Legislative Insurance Commission*, 1906, pp. 72-83; *Report of the Educational Commission*, 1908.

⁶⁸ *Report of the Special Tax Commission*, 1912, pp. 83-137; *House Journal*, 1913, p. 1703; *Senate Journal*, 1913, pp. 2183-2187; *Report of the Employer's Liability Commission*, 1912, pp. 26-48, 57-64.

⁶⁹ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, pp. 189-192; *Report of the Code Commission*, 1896, pp. 6, 7, 87, 89.

⁷⁰ *The American Political Science Review*, Vol. X, p. 17.

⁷¹ *Proceedings of the Iowa State Bar Association*, Vol. XXI, p. 191; *Senate Journal*, 1915, p. 598; *House Journal*, 1915, p. 1423.

⁷² *House Journal*, 1860, p. 547.

⁷³ *Senate Journal*, 1870, p. 270.

"Legislative committees", says one writer, "should employ experts of all kinds — engineers, economists, accountants, physicians, actuaries, and in fact specialists of every class, who are capable of disinterested scientific investigation."— *Bulletin of the American Library Association*, Vol. III, pp. 297, 298.

It is stated that in Wisconsin, Indiana, Nebraska, Colorado, Washington, Texas, and Ohio, the head of the legislative reference bureau either is or has been a member of a university faculty of political science or government.— *Kaiser's Law, Legislative and Municipal Reference Libraries*, p. 232.

⁷⁴ *Senate Journal*, 1902, p. 617; *House Journal*, 1904, pp. 549, 550.

⁷⁵ *Proceedings of the American Bar Association*, 1914, pp. 837, 838.

⁷⁶ *Proceedings of the American Bar Association*, 1897, p. 273; *Proceedings of the Iowa State Bar Association*, Vol. X, p. 89, Vol. XXI, p. 128; Reinsch's *American Legislatures and Legislative Methods*, pp. 288, 289.

⁷⁷ Bentham's *Works*, Vol. V, p. 149, Vol. VI, p. 551.

⁷⁸ Thring's *Practical Legislation*, p. 3; Lieber's *Legal and Political Hermeneutics*, p. 21; Bryce's *Studies in History and Jurisprudence*, Vol. II, p. 733; *The American Political Science Review*, Vol. X, p. 14; *Proceedings of the American Bar Association*, 1914, p. 838.

⁷⁹ *Proceedings of the Iowa State Bar Association*, Vol. II, p. 125, Vol. V,

p. 28, Vol. VII, pp. 116-134, Vol. XI, p. 148, Vol. XX, p. 12, Vol. XXI, pp. 175, 179-183, 191.

⁸⁰ *Council Journal*, 1838-1839, p. 41; *House Journal*, 1838-1839, pp. 24, 26, 37; *Laws of Iowa*, 1838-1839, p. 28.

⁸¹ *Proceedings of the Iowa State Bar Association*, Vol. XVIII, pp. 39, 41, 44.

⁸² *Iowa Applied History Series*, Vol. II, pp. vii, viii, ix; *Laws of Iowa*, 1907, pp. 227, 228, 285; *House Journal*, 1909, pp. 562, 1004-1006, 1384; *Senate Journal*, 1909, p. 1744.

⁸³ *Senate Journal*, 1911, p. 44; Senate File, No. 105 (1913); Senate File, No. 91 (1915); House File, No. 184 (1913); House File, No. 14 (1915); *Laws of Iowa*, 1911, p. 164; *Proceedings of the Iowa State Bar Association*, Vol. XXII, p. 215; *Columbia Law Review*, Vol. VIII, p. 166.

⁸⁴ *Iowa Applied History Series*, Vol. I, pp. vii, ix, xiii, Vol. II, pp. ix-xi.

⁸⁵ *Columbia Law Review*, Vol. VIII, p. 171.

⁸⁶ *House Journal*, 1911, pp. 1058, 1366; *Senate Journal*, 1913, pp. 218, 464, 1915, pp. 154, 564, 773; Senate File, No. 105 (1913), Sec. 4.

⁸⁷ *Proceedings of the Iowa State Bar Association*, Vol. XXI, pp. 128, 129.

⁸⁸ Stimson's *Popular Law-making*, p. 363.

⁸⁹ *The Register and Leader* (Des Moines), April 16, 1913.

⁹⁰ Ilbert's *The Mechanics of Law Making*, p. 195.

⁹¹ *Columbia Law Review*, Vol. VIII, pp. 160, 168; *Iowa Applied History Series*, Vol. II, p. v.

⁹² *Iowa Applied History Series*, Vol. II, pp. xi, xii.

THE COMMITTEE SYSTEM
BY
FRANK E. HORACK

I

ORIGIN AND PURPOSE OF COMMITTEES

THE committee as a method of handling legislative matters has come to be a most important if not the dominant factor in statute law-making. In its modern form and workings this method may be defined as a system which, while including all committees, centers legislation in those great committees that continue through the legislative session and are known as "the standing committees". Each one of these great committees "has charge of a specific division of the business of the house in such manner, that all matters falling within that division are regularly and usually referred to that committee for preparative consideration previous to final action upon them by the house."¹

ORIGIN OF COMMITTEES

It appears that the committee system originated in England long before the adoption of the Constitution of the United States. Indeed, Mr. J. Franklin Jameson has pointed out that its germs are to be found as far back as the reign of Edward I: it is seen distinctly by 1340 in the appointment of a committee for the special purpose of framing a particular statute from a petition.² Again, Sir Thomas Smith in his treatise on the *Commonwealth of England*, written in 1577, shows conclusively that committees for framing laws were then an important feature of legislative procedure in Parliament. "The Committees", he says, "are such as either the Lords in the higher

House, or Burgesses in the Lower House, doe choose to frame the Lawes upon such Bills as are agreed upon, and afterward to bee ratified by the same Houses.”³

It is an interesting fact that the early committees of Parliament were not named by the speaker but were nominated by other members. Moreover, in 1653 there were committees of the House of Commons closely resembling the American system of standing committees. Although the system fell into disuse with the development of the Cabinet — which is essentially an executive committee of Parliament — standing committees were revived in 1883.⁴

The American system of standing committees was borrowed from England, and was developed first in the colonial assemblies of the southern and middle colonies. Adopted by the Continental Congress and developed in the House of Representatives under the Constitution, it reached its full growth under the speakership of Henry Clay. Later the domination of the committee system by the speaker became the subject of much criticism; and since 1911 the Federal House of Representatives has returned to the original English practice of selecting its own committees. Appointments are now made by a committee on committees under the guidance of the dominant party.

As the Federal government has grown in strength its organization and procedure have profoundly influenced legislative organization and procedure in the several States: as changes have taken place in the one, like tendencies have been manifest in the other. Accordingly, in examining the operation of the committee system in Iowa since the establishment of the Territorial government in 1838, one is not surprised to find a conscious copying of methods in force in the older States and in the Federal government.

PURPOSE OF COMMITTEES

To expedite business and to obtain results with a reasonable degree of promptness in large legislative bodies three different methods have been resorted to: *first*, only a few and comparatively simple questions are left to the assembly, propositions being formulated and presented only for an affirmative or negative vote; *second*, the members of the assembly are organized into well-defined parties, the rank and file moving like battalions at the command of recognized leaders; *third*, the assembly is divided into a number of smaller bodies for the consideration of questions previous to final action thereon by the assembly itself.⁵

The last named expedient has been employed in the Federal and State governments in the United States and is known as "the committee system". This system, says Bryce, "was recommended, not only by its promising a useful division of labour, but by its recognition of republican equality."⁶ Moreover, evidence is not lacking to show that originally the purpose of dividing the legislative body into committees was to create impartial groups or boards for the consideration of matters referred to them; and so an ancient rule of the House of Commons provided that a person who had spoken against a bill could not be a member of the committee to which it was referred. Thus it is apparent that the purpose of the committee system is to subdivide and parcel out the field of legislation so that each division thereof may receive due attention. Without some such arrangement the legislature would be buried under a mass of bills.

In theory the committee system contemplates the careful consideration of all measures and adequate opportunity for both the friends and the opponents of pro-

posed measures to be heard. As a matter of practice, however, only a few bills receive such treatment. A proposed measure, having passed its first and second reading, is usually referred to a committee without debate. "Not having been discussed, much less affirmed in principle, by the House, a bill comes before its committee with no presumption in its favor, but rather as a shivering ghost stands before Minos in the nether world. It is one of many, and for the most a sad fate is reserved."⁷ Especially is this true of bills referred to the more important committees.

Firmly established in American legislatures the committee system has truly become, what Thomas B. Reed said of it, "the eye, the ear, the hand, and very often the brain of the house." The informal procedure in a committee enables its members to study questions with deliberation and put proposed legislation into proper shape for final action by the assembly. So important have the standing committees become in all legislative bodies that Mr. Woodrow Wilson found it possible to describe the government of the United States as "a government by the chairmen of the Standing Committees of Congress."⁸

II

DIFFERENT KINDS OF COMMITTEES

THE many committees which are employed by American legislatures may be grouped into two classes — standing committees and select committees. A description of these two groups at the outset will be conducive to a better understanding of the system and its workings.

STANDING COMMITTEES

Standing committees are regarded as committees of superior rank because they are permanent and because they are appointed at the opening of the legislature to consider all subjects of a particular class which may arise in the course of the session. The number of such committees and the number of members of which each is composed varies greatly not only in different legislative bodies, but also in the same body during a period of years. These committees are usually designated according to the subject-matter committed to them. At the same time it is not unusual for matters quite foreign to the name of a committee to be referred to it. For instance, in the Fourth General Assembly temperance measures in the Senate were referred to the committee on agriculture;⁹ and in the Sixth General Assembly the library committee was requested to report on certain tax tables.¹⁰

As to the composition of standing committees it has been the practice in Iowa to leave the naming of the members to the presiding officer of the house. Sometimes, however, the composition of the committee is determined,

in part at least, by resolution. For example, in the Twenty-second General Assembly, when a railroad rate bill was under discussion, a resolution was introduced providing that the schedule of rates under consideration be referred to the railroad committee and that to the committee there be added from the members of the House two dealers in agricultural implements, two stock dealers, two wholesale merchants, two retail merchants, two lumber dealers, two grain dealers, two farmers, and two coal operators. This resolution was amended to read six farmers instead of two, and then adopted.¹¹

SELECT OR SPECIAL COMMITTEES

A "select" or "special" committee is usually one which is created to take charge of a special matter.¹² It is temporary and usually ceases to exist after it has reported on the matter confided to it. Originally the select committee was the only agency for collecting information or for the special consideration of bills, memorials, petitions, and other legislative matters.¹³

In the first session of the Territorial Assembly in Iowa it was provided in the rules of both houses that every bill should be introduced by motion for leave or by an order of the house on the report of a committee; and in either case a committee to prepare the bill was appointed. Members were required to give one day's notice of their intention to bring in a bill. Thus when a member desired the consideration of a particular subject of legislation he gave the required notice, and the presiding officer forthwith appointed a select committee to prepare and report a bill. Even after the establishment of the standing committees there was still an extensive use of select committees for investigation and other purposes.

Forty-six such committees were appointed in the Council during the legislative session of 1841-1842.

Political subdivisions of the State were frequently recognized in the composition of these special committees. During the Territorial period it was not uncommon to refer petitions from special localities to the entire delegation from the counties concerned. Sometimes the select committee was, by resolution, composed of one member from each Congressional district, or from each judicial district, or from each electoral district. Such committees were invariably appointed by the presiding officer, though occasionally the chairman was designated by resolution. In the Third Legislative Assembly an attempt was made in the Council to elect by ballot a select committee to visit public buildings; but when the Council found itself unable to give anyone a majority, the committee was appointed by the president.¹⁴ In 1870 a select committee was appointed to name trustees of the Hospital for the Insane at Independence, and their report was adopted.¹⁵

A variation of the select committee not often encountered in these days is known as the "open committee". This is indeed a select committee of certain members specially named, with the proviso, however, that "all who come are to have voices".¹⁶ Likewise a "secret committee", or "committee of secrecy", is a select committee which by direction of the house conducts its proceedings in secret.¹⁷ Indeed, an endless variety of select committees may be named, if designated by the subjects referred to them.

The following special committees are named in the House journal of the Thirty-fifth General Assembly: on credentials; to escort the speaker to the chair; to notify the Governor that the House is organized; to notify the

Senate that the House is organized; to escort the speaker *pro tempore* to the chair; to assign committee rooms; to arrange for chaplains; to examine committee clerks; on mileage; on election contests; and to notify the Governor of adjournment. This would seem to indicate that the select committee is to-day used chiefly for purposes of ceremony and courtesy.

COMMITTEE OF THE WHOLE

Authorities agree that the committee of the whole is not a committee in the sense in which that term is generally employed, but is in reality the house itself doing business under a special and less formal procedure. The committee of the whole is composed of all the members of the house and sits in the house while the house is sitting. It is a favorite procedure because it permits the entire membership of the house to participate in the consideration of a bill, "unhampered by roll-calls or the intervention of motions to adjourn, to refer, to postpone, for the previous question, and the like."¹⁸

In the early history of Iowa practically all matters were considered in the committee of the whole. As the membership of the houses was small it was a convenient method of acquainting all of the members with the subjects of legislation under consideration. With the increase in membership of the houses and the development of the standing committee system the use of the committee of the whole has become less frequent.

JOINT COMMITTEES

Joint committees are committees composed of members from both houses — created, usually, by a concurrent resolution of the two houses. They may be either stand-

ing or select. Joint committees were used in the English Parliament in the latter part of the eighteenth century.¹⁹ They are still extensively employed in the New England States, but in other parts of the Union their use is generally limited to special or rare occasions.²⁰ Thus in the Thirty-fifth General Assembly the following appear in the journal of the Senate as joint committees: on additional employees; on inauguration; on needed capitol repairs; to purchase gavel and chair; to notify William S. Kenyon of his election to the United States Senate; and to attend the funeral of Daniel L. Castle. The House journal for the same session gives the following: to authorize the appointment of a telephone messenger; to notify the Governor and Lieutenant Governor of their election; on inauguration; on extra help; to notify William S. Kenyon of his election to the United States Senate; to attend the funeral of Charles Gates; and to arrange Larrabee memorial services.

In the early history of Iowa joint committees seem to have been frequently used for more important business. Thus in 1858 a joint committee was appointed to inquire into the necessity of further legislation to regulate the manufacture and sale of intoxicating liquors. Moreover, the committee on retrenchment and reform has long been a joint standing committee, which has been provided for by law instead of by resolution.

Speaking of joint legislative committees, Thomas B. Reed says that "such a committee system has much to commend it, since one hearing does for both branches, and each knows the arguments and testimony presented to the other."²¹ Moreover, in addition to the time saved by avoiding the duplication of hearings, there is less opportunity for shifting responsibility from one house to

the floor of the house unless such bills are reported by the committee. The function of a sifting committee, however, is not alone to destroy: it may amend bills in its hands or present new bills for the consideration of the house. The journals of the houses of the General Assembly show that the sifting committees have sometimes introduced bills.

Iowa is one of the few States in which the sifting committee has been regularly employed in recent years to take charge of the bewildering mass of bills which remain undisposed of when the time for adjournment draws near. Indeed, one writer leaves the impression that the sifting committee is an institution peculiar to Iowa.²⁵

Although a sifting committee may help somewhat to bring order out of chaos during the closing days of the session, its creation may be considered as an indictment of the committee system itself or as a perversion of legislative procedure. In fact, there are but two explanations of the existence of a sifting committee: either the standing committees have failed to accomplish their work during the time set for the session, or the creation of a sifting committee is a part of a prearranged plan to delay matters as much as possible so that in the closing days of the session a single committee may take charge, through which the program of the leaders can be carried out with comparative ease.

Appointed by the presiding officer of the house, a sifting committee becomes in a very marked degree responsible to that officer. In naming a sifting committee the presiding officer usually gives places to representatives of the various political interests and geographical divisions of the State. When given full discretion the presiding officer may find it an easy matter to make up a

committee of friends to whom a mere suggestion is sufficient to promote or defeat a pending measure.

The adoption of a resolution providing for a sifting committee is usually followed by an effort to secure action by the regular committees upon bills before they are swept into the hands of the sifting committee, especially if the resolution creating the committee exempts bills on the calendar; for in the sifting committee the presumption is usually against a bill. Sometimes a house resents the attitude of a sifting committee and orders it to report out certain bills that are considered important. At other times a sifting committee is "requested" to report a certain bill. If it refuses to comply with the request the only recourse is for the house to take the bill from the committee — an action which may require a suspension of the rules.

In the session of 1892 the Senate resolution creating a sifting committee provided that "no bills, except appropriation bills, be hereafter considered, unless favorably reported by said committee". After the sifting committee took charge of all bills referred to it, a resolution was introduced instructing the committee to report back to the Senate, for its favorable action, House File No. 275. Following several fruitless attempts to prevent the resolution from coming to a vote, a point of order was raised to the effect that the sifting committee could not be required to report back the bill without a suspension of the rules. The chair ruled that the point of order was well taken. Whereupon the author of the resolution appealed from the decision of the chair. The chair was sustained by a vote of thirty-seven to three. The author of the resolution explained his vote as follows:

what business should be acted upon'', which resolution was adopted. On January 23rd the committee thus appointed made a report.

In 1870 the sifting committee in the House included the chairmen of all standing committees — forty-four in number. While the House has made much use of sifting committees it seems not to have employed this agency of legislation with the same degree of regularity as has the Senate. In recent years the number of members on the committee in both houses has been seven; nor has the membership been confined to the chairmen of standing committees. The House has frequently required the speaker to make his appointments on or before a certain date; and it has set the day when the sifting committee should begin work.

The development of the sifting committee in Iowa can best be studied in the records of the Senate. A sifting committee was first employed in that body in 1864, when a resolution was adopted calling for a joint committee of the House and Senate "to examine all Bills pending in either Branch of the General Assembly, and report to each House on Monday morning, or sooner, such bills as in their judgment should be first considered and acted upon to subserve the best interests of the State."²⁹ The three Senate members provided for in the resolution were duly appointed; but as the House failed to act, the chairman of the Senate members moved the appointment of a committee for the Senate, and the motion was adopted.³⁰ The three members named for the joint committee were now appointed as a sifting committee for the Senate.

At the session of the Thirteenth General Assembly a resolution was introduced on April 11, 1870, providing "that a Committee of seven of the Chairmen of the lead-

ing Committees, be appointed to assort the bills still pending before the Senate, and to classify the same, to enable the Senate to act on the most important measures before adjournment." This resolution was adopted after being amended by naming Senator Bennett as chairman of the committee.³¹

The resolution of the Senate in 1872 provided that fifteen of the chairmen of the standing committees should be named by the president as a sifting committee, of which the Senator from Jones County should be chairman. The committee was ordered to classify all bills in such order as in their opinion would best facilitate the business of the session.³² Two years later the Senate committee consisted "of ten of the chairmans of the committees" selected by the president.³³ From the appointment of the second sifting committee in 1870 down to 1882 the Senate resolution always designated that the members of the committee should be selected from the chairmen of the standing committees. In 1882 the resolution provided that nine members should be appointed to examine all bills on the files of the Senate and arrange them in three classes in the order of their importance.³⁴

The first limitation was placed on the Senate sifting committee by the Twentieth General Assembly in 1884, the resolution reading: "*Resolved*, that a sifting committee of seven Senators be appointed, to whom all pending bills, except those on third reading and on special order, or appropriation bills shall be referred for classification, said committee to be named by the President."³⁵ At this session the committee was "instructed to present House Files for consideration by the Senate, and that no further time shall be taken up in the consideration of Senate Files, unless it be to concur in amendments by the

House.”³⁶ In 1886 only the bills “now made special orders” were exempted from the sifting committee.³⁷ The appropriations committee, however, had been requested by resolution to report all general appropriation bills before the sifting committee took charge.³⁸

Dissatisfaction with the power exercised by the sifting committee seems to have come to the surface in the Twenty-second General Assembly, when a resolution was introduced providing for the appointment of a committee of nine Senators to have charge of all measures other than appropriation bills, and providing “that no bills except appropriation bills be hereafter considered unless favorably reported by said committee, provided, that in no case shall the Senator from Harrison be appointed on said committee.”³⁹ This resolution was amended by striking out the proviso and by adding that the “sifting committee shall report as the first bill on their calendar for consideration, House File No. 542.”⁴⁰ An attempt to further amend the resolution by providing “that not more than one member shall be appointed out of any one vocation” failed.

In 1890 the Senate resolution creating a sifting committee provided that no bills except appropriation bills be considered unless favorably reported by the sifting committee, and that the bills recommended by this committee be taken up in the order in which they were reported.

The session of 1892 was marked by a struggle in the Senate to force the sifting committee to report favorably a bill providing for the bi-weekly payment of coal miners. When a resolution to instruct the sifting committee to report the bill was introduced, a point of order was raised that it would require a suspension of the rules to

compel the sifting committee to report the bill. The chair sustained the point of order; and on appeal from this decision, the chair was sustained. In explaining his vote one Senator said: "I believe that this should be a democratic and republican body, and that the body of the Senate have rights that even a monopoly Sifting Committee should respect. I am opposed to this one man power. I am opposed to a few men killing anti-monopoly measures in committees, while depriving the body of the Senate from a vote or voice."⁴¹ Other attempts to compel or induce the sifting committee to report the bill failed.

In 1894 House File No. 22 and all bills set for special order were excepted from the jurisdiction of the Senate sifting committee; while at the next session the sifting committee was empowered to take charge of "all bills hereafter introduced". Again in 1900 the resolution declared that no bills except appropriation bills should be considered unless personally reported by the sifting committee. In 1907 an amendment to the sifting committee resolution provided that no bills reported for indefinite postponement should be considered.

In 1909 and 1911 nearly half of the bills passed by the General Assembly were signed by the Governor after adjournment. In 1909 the sifting committee was appointed in the House on April 5th, and in the Senate on April 7th — the date of adjournment being April 9th. In this session the House sifting committee resolution provided that no bills except appropriation bills should be considered unless reported by the sifting committee, and that no bills already recommended for indefinite postponement should be considered. On the other hand the Senate's sifting committee resolution excluded special orders and

bills on the calendar in addition to appropriations from the operation of the sifting committee. In the two days during which the Senate sifting committee was in charge it reported but nine bills — seven being House bills and two Senate bills. Thus it is apparent that in this case the sifting committee did not determine the major part of the legislation enacted.

In 1911 the sifting committee was appointed in the Senate on April 1st (but it did not take charge until April 3rd) and in the House on April 4th — the date of adjournment in this instance being April 12th. In this case the Senate sifting committee resolution excluded, as usual, appropriation bills; and it provided that no other bills should be considered unless reported by the sifting committee and that no bills reported for indefinite postponement should be considered. The House resolution was like that of the Senate, except that it contained no reference to bills indefinitely postponed. The index to the House journal does not show that the sifting committee made a single report; but the Senate sifting committee reported over a hundred measures.

Again, in 1913 only thirty-three of the three hundred and ninety-seven bills passed by the legislature were approved by the Governor after adjournment, though he signed sixty measures on the day of adjournment. The sifting committee in this session was appointed in the House on April 1st and in the Senate on April 8th; while adjournment took place on April 19th. Out of the three hundred and ninety-seven bills passed during this session only one hundred and seventeen had been passed prior to April 9th, when the sifting committees in both houses were in full charge. Although two-thirds of the legislation enacted during the session of the Thirty-fifth Gen-

eral Assembly was passed in the last ten days, it is not safe to say that the sifting committee determined the character of most of this legislation inasmuch as the resolutions creating the sifting committee excluded appropriations, special orders, and bills then on the calendar. It is therefore possible that much of the legislation enacted in the last ten days fell within one of these three groups. The journals show that the Senate committee made only three reports, but returned to the Senate for consideration without recommendation a large number of bills; while the House sifting committee seems to have been very active in making amendments.

The session of 1915 gives further evidence of the fact that the character of the sifting committees appears to be changing. At this session the chief function of the sifting committees appears to have been to hold most of the bills referred to them until withdrawn by order of the house. They acted as agencies to prevent rather than to promote legislation.

The sifting committee may or may not be an important legislative agency. When the presiding officer is given full discretion in the appointment of such a committee, and when the committee is given full power over all measures whether previously reported favorably or unfavorably, and when a great majority of bills have not been acted upon when the committee takes charge, it may determine the character of most of the legislation enacted during the session, without at the same time being held responsible for such legislation. On the other hand, the committee may act only as a custodian of the bills, awaiting the orders of the house to present measures for consideration.

III

APPOINTMENT OF COMMITTEES

Four different methods of selecting members of committees are recognized: (1) the names of members may be proposed and voted upon by the house; (2) the members may be chosen by ballot; (3) the members may be appointed by the presiding officer or by a committee selected for that purpose; or (4) membership may be determined by lot. In practice, standing and select committees are usually chosen according to the third method, that is, they are appointed by the presiding officer or named by a committee on appointments.

THE SPEAKER AND COMMITTEE APPOINTMENTS

In American legislatures the practice has been to permit the presiding officer, particularly in the lower house, to appoint all committees unless otherwise ordered. This privilege has placed in his hands extraordinary power. "He can, by a judicious selection of committee membership, to a limited extent, shape legislation in advance to accord with his views."⁴² In Congress the speaker, until 1911, acted on the theory that the chair had a right to pursue a policy of his own; and so, he constituted the committees of the House in such a manner as to assure the carrying out of his own policies of legislation. Thus he might assign to an important committee a weak chairman; or he might appoint a strong chairman and fill the committee with men representing his (the speaker's) views and with whom the chairman would be unable to

work to advantage. The speaker might also put the strong men of the minority upon unimportant committees, and assign the weak men of the minority to the influential committees.⁴³

It appears that with the growth of the party system, the membership of committees was often made up in the anticipation that certain legislation would be proposed: indeed, agreements and understandings were sometimes reached between the presiding officer and members of the house in advance of and in consideration of committee appointments.⁴⁴ "It has been, in fact, all but universally acknowledged", says Follett, "that the Speaker's first thought in the construction of the committees should be the interests of his party."⁴⁵ Both in Congress and in State legislatures committees have become actively partisan: they are usually constituted to safeguard party policies. In the appointment of committees members of the minority are frequently given harmless assignments. The office of speaker has become more than that of a parliamentarian or moderator: his office is political, and he is chosen to represent a political constituency. In Congress, for years, the election of the speaker of the House depended upon his attitude toward slavery.⁴⁶ Likewise in Iowa the choice of a speaker has frequently been determined by the candidate's attitude toward railroads, the liquor problem, or some other important question of reform.⁴⁷

Throughout the legislative history of Iowa the presiding officers in both houses of the General Assembly have enjoyed the power of making up the committee lists, subject only to the limitations provided by the rules or by resolution as to the number of members in certain or all committees. Indeed, the power of appointment is almost

absolute, since there is no rule requiring the approval of appointments in either house.⁴⁸ Nevertheless, the presiding officers of the two houses are not altogether free: they must please their party, "satisfy individuals, meet the reasonable expectations of the minority, and appear respectable to the country — a laborious task greatly increased by the large number of new men and the impotunity of members for particular places."⁴⁹

The consideration of first importance in the naming of committees in the House probably arises out of the election of the speaker, of whom a great deal is expected. Thus, he must remember the men who supported his candidacy; he must recognize that each of the other candidates of his own party also has a following and must not be offended; he must redeem the promises he has made during his candidacy for the office; and he must not recklessly overthrow custom — which demands that a man once appointed to a committee remains there until promoted to a more desirable post.⁵⁰ That committee appointments constitute patronage of tremendous power in legislation is well recognized to-day: the presiding officer may by a judicious distribution of members secure the predominance of his own friends on every important committee.

In Congress "it is doubtful if Speakers have, as a rule, been unduly partial in their appointments. Custom based on unwritten law has obliged them to recognize long service, peculiar fitness, party standing, and a fair division among States and important groups of men." At the same time it has been observed that, "if the sporadic testimony of members be accepted, grounds for complaint have existed ever since Speaker Macon, to gratify President Jefferson, placed John Randolph, then a young

man in his second term, at the head of the Ways and Means."⁵¹ In Iowa it has been charged that committees on the suppression of intemperance have deliberately been made "wet" and that committees on woman's suffrage have been made "anti", according to the private opinions or party obligations of the appointing officer.

NUMBER OF COMMITTEES AND NUMBER OF MEMBERS

In the early history of Iowa the number of committees and the number of members constituting committees were small; but as the business of legislation increased and the demands for political recognition became more urgent, the numbers were materially enlarged. The increase, however, has been most rapid in recent years. In the House of Representatives the number of committees increased from forty-four in 1870 to fifty-three in 1904. Since 1906 the House membership has been increased from 100 to 108, and the number of committees has increased from fifty-three in 1906 to sixty-one in 1915. In the Senate the membership has been fifty since 1870; but the number of committees has increased from thirty-seven in 1870 to forty-four in 1915.⁵² At present the standing committees are not named in the rules of either house, the number of committees and the number of members being largely determined by custom.

The number of standing committees in the early assemblies was fixed by special resolution at the beginning of the session. Later the number was determined by resolution empowering the presiding officer to appoint the usual or regular standing committees. Still later the number of standing committees was determined by the rules. Finally, as has been shown above, there is at the present time neither resolution nor standing rule to guide

law defining the duties of constables as to make it the duty of such officers to take delivery bonds, and (2) to report by bill or otherwise. Again, in 1843 the House committee on military affairs was instructed to inquire into the expediency of reporting a bill and amending the existing laws for the organization and discipline of the militia of the Territory upon six specific topics enumerated in the resolution. In 1846-1847 the House committee on ways and means was instructed to report a revenue bill classifying all lands into first, second, and third classes, so that each class might be assessed according to its true value irrespective of the improvements made thereon. A special committee was later instructed "to devise and report . . . the basis of a revenue system free from the defects of the present one".⁵³

Instructions as to the time of making a report were not uncommon. Thus the journals show that a committee was instructed to report on "Monday morning"; another, "at as early a day as practicable"; and still another, "tomorrow morning".

Definite instructions such as those above cited are now seldom, if ever, given to committees in the General Assembly of Iowa. To-day the character of the legislation enacted depends largely upon the committees. It is also true that a sad fate awaits most of the bills which are referred to the committees. During the last four sessions of the General Assembly of Iowa nearly five thousand bills were introduced, but only about one-fourth of them were enacted into law.

Since the fate of a bill rests largely with the committee, it is a matter of some importance to which committee a given measure is referred. Frequently a bill is of such a character that it may properly be regarded as coming

within the jurisdiction of two different committees. Should a bill or joint resolution providing for a prohibitory amendment be referred to the committee on the suppression of intemperance or to the committee on constitutional amendments? Should a bill providing a penalty for selling stale eggs be referred to the committee on food and dairy, the committee on public health, or to the committee on judiciary? It is in such cases that "politics" sometimes finds an opportunity to enter into legislation. For example, if there is an "organization" or "machine" in the house and that organization or machine decides that there is to be no hostile liquor legislation during the session it is an easy matter to secure the appointment of a "dry" committee on the suppression of intemperance, to make the committees on judiciary or constitutional amendments safely "wet", and then refer all proposed liquor legislation either to the committee on judiciary or to the committee on constitutional amendments. Thus the fate of the bill may depend upon what committee it is referred to—whether it must face a tribunal of friends or of foes. Some of the sharp struggles in the legislature have been to decide to which of two committees a bill should be committed or, later, recommended.

Bills referred to a committee may be amended by the committee without limit; or the committee may draw up and present a substitute measure. In fact, the tendency in recent times is to rely more and more upon the committees to put bills in proper shape—thus accomplishing much the same end as was attained when at an earlier day a member suggested a subject of legislation and a committee was named to frame a bill on the subject.

Legislative reference departments and bill-drafting

bureaus have been of enormous value to committees by helping them to determine the value of proposed legislation and assisting them in getting bills into proper legal form. Committees are quick to appreciate the worth of this reference and research work and gladly seek assistance upon bills referred to them. Committees working upon abstract and technical subjects are thus enabled to secure in concise form data from other jurisdictions and help from experts upon the particular subjects.

SUB-COMMITTEES

With the rapid increase in the membership of committees in recent years, the committee system has sometimes been reduced to a farce when nearly half of the membership of the house is placed upon the important committees. Such large and unwieldy committees may easily become the willing servants of the dominant political organization. Nor do the chairmen and members of committees named by the presiding officer always constitute impartial investigating boards. Indeed, it often transpires that in order to keep a large committee under control the chairman of the committee scrutinizes all measures submitted to his committee and carefully selects a few friends to act as a sub-committee to investigate and report. A word to the chairman of the sub-committee may be sufficient to determine the character of the report. Thus the wishes of the chairman may become the recommendations of the sub-committee, and these in turn may become the recommendations of the full committee; while the recommendations of the full committee are likely to determine the action of the house. The outcome is legislation which may represent only a minority view.

TIME AND PLACE OF COMMITTEE MEETINGS

The time and place of committee meetings are usually determined by the chairmen. Prior to 1882 it seems to have been the custom for committees to meet quite independently of each other at such times and places as the chairmen might designate. At the session of the General Assembly in 1874 a resolution was offered directing the chairmen of the several standing committees of the Senate to give notice of the time and place of meeting of their respective committees at the close of each day's session; but this resolution was not adopted. In 1882, however, a resolution was adopted which provided "that the chairmen of the several standing committees of the Senate shall, after conference, appoint the day, hour, and place of meeting of their respective committees, and report their action to the Senate at as early a day as possible."⁵⁴

In 1884 a resolution was offered directing the secretary of the Senate to obtain in writing from the chairmen statements of the time and place of committee meetings and announce the same just before adjournment at each daily session. The resolution was referred to the committee on rules, which offered the following substitute: "That when an adjournment has been ordered by a vote of the Senate, and before the adjournment is declared by the President of the Senate, it shall be in order for the chairman of the several standing committees to announce in open Senate the time and place of meeting of their respective committees."⁵⁵ This substitute resolution, which was adopted, is still found in the Senate rules. Since 1890 it has been the practice for a committee appointed by resolution "to arrange a schedule for hours of meeting of the various standing committees of the Senate."

Indeed, it is now customary in both houses to have a schedule of the time and place of meeting of most of the committees; but complaints are sometimes made that the meetings do not follow the schedule. A chairman may call a meeting either before or after a session and at any place convenience may suggest — it may even be in the evening at rooms in hotels. When important measures are handled in this manner, the opposition members may know nothing of the meeting until the report of the committee is made by the chairman.

Committees are not usually allowed to sit during the sessions of the house without express permission of the house — which is sometimes granted to sifting or other committees near the end of the session.

POWER TO SEND FOR PERSONS AND PAPERS

Whenever a committee finds it necessary to investigate facts it may, without express authority from the house, examine all witnesses who appear and all papers that may be brought before it and all records to which it can obtain access. It can not, however, without express authority, compel the attendance of witnesses or the production of papers. At the same time, whenever it is deemed necessary a committee may be given power “to send for persons, papers, and records”.

Persons summoned by the chairman of a committee, to which the necessary authority has been granted, must appear and bring such documents as they may be directed to produce. Any failure on the part of an individual to comply with such summons might be reported to the house and the offender dealt with in the same manner as for contempt of the house itself.⁵⁶

PROCEEDINGS IN COMMITTEES

A committee is regarded as a portion of the house limited in its inquiry by the authority granted to it; and it is governed in its proceedings by the same rules of common parliamentary practice which prevail in the house.⁵⁷ The committee is presided over by a chairman who, according to custom, is usually the first person designated in the list of members. The house may, however, determine by resolution who the chairman shall be. Otherwise when assembled and organized a committee is presumed to have the right to choose its own chairman — though in practice this right is not often exercised.

A committee can not proceed with the transaction of business unless a quorum is present. If no number has been fixed it is usually understood to mean that a majority of all the members appointed constitute a quorum. Since 1882 the rules of the House of Representatives have prescribed seven or a majority as a committee quorum; while the Senate at present seems to have no rule on the subject of committee quorum — the presumption being, however, that a majority constitutes a quorum.

In the transaction of business a committee proceeds by motions, resolutions, and votes according to the rules by which the house is governed, with the exception, however, that in committee a member may speak more than once on the same question. In committee proceedings motions need not be seconded. As a matter of practice the procedure is often so informal that all formal motions and votes are dispensed with. Cushing declares that American practice does not sanction the reconsideration of a vote in a committee.⁵⁸

Questions are determined in committees by voices and by divisions the same as in the house; and there seems to

be no rule in either branch of the General Assembly of Iowa which forbids the chairman of a committee the right to vote except in case of a tie. Indeed, there is little reason for the chairman to cast a vote unless it is to make or break a tie.

The rule that "all actions of a committee must be taken at a regular meeting duly called, or where all are present" and that "the consent of all, individually, without a meeting will not render valid any action" is not strictly followed in practice. A chairman may sometimes interrogate members of his committee in the cloak rooms, hotel lobby, or over the telephone and base his report upon the opinions thus received.

The committee, like the house itself, has authority to exclude strangers.⁵⁹ It may admit strangers to give evidence or testimony, or it may hold public hearings; but when the committee is deliberating it usually excludes all outsiders. By the rules of both houses of the General Assembly of Iowa all persons not members of the committee are excluded when a vote is being taken.

Most of the legislative committees are provided with a clerk or secretary to keep a record of the proceedings. In 1915 Governor Clarke in his message to the Assembly declared that "a committee should be required to keep full and exact record of every meeting."⁶⁰ The rules of the House of the Thirty-sixth General Assembly made provision for the keeping and preservation of committee records by declaring that "it shall be the duty of the chairman to see that the record of the committee meetings as herein provided, is properly kept, and that the same is deposited with the chief clerk of the house at the final adjournment of the session." It is also required by the House rules that "when a motion which works a final

disposition of a bill in the committee is up for adoption the roll of the committee shall be called and the yeas and nays entered in the minutes of the meeting"—except in the committees on judiciary and appropriations. Although the Senate had no rule on the subject, committee records were kept and deposited with the secretary of the Senate at the close of the session of the Thirty-sixth General Assembly. The committee records of the House were by the chief clerk deposited with the Secretary of State, while the committee records of the Senate were by the secretary of the Senate deposited with the secretary of the Executive Council for permanent preservation. (For a discussion of certain special features of procedure relative to the consideration of bills by committees see Mr. Patton's paper on the *Methods of Statute Law-making in Iowa* in this volume, pp. 217-226.)

V

COMMITTEE REPORTS

SINCE "the great purpose for which committees are appointed" is "the taking of such measures with reference to the subject matter referred to their consideration that when their acts and proceedings are agreed to they become the acts and proceedings of the house, it is consequently the duty of committees both to proceed under the authority given them, and to report their doings to the house."⁶¹

A majority of the members of a committee determine the report of the committee: indeed, the views of the majority constitute the report.⁶² An instance in the Twenty-eighth General Assembly seems to contradict the statement just made. The chairman of the Senate committee on insurance presented a report for the committee, which consisted of twelve members. A minority report signed by eight members was also presented.⁶³ When the reports were called up some time later, a motion was made to substitute the minority report for the majority report. On the motion to substitute all the minority members and the chairman, who originally presented the report of the committee, voted in the affirmative and the motion was lost by a vote of twenty-nine to sixteen. Unless the report was originally made by the chairman without consultation with the other members, it is difficult to see how four out of twelve members could present the majority report.

In some States a committee can make but one report,

namely, the one upon which the majority agree. In other States, however, the right to make minority reports is guaranteed by the rules.⁶⁴ Thus the rules of the House of Representatives of the Thirty-sixth General Assembly of Iowa guarantee the minority the right to make a report and have it printed in the journal;⁶⁵ but the Senate seems to have no rule on the subject. Legislative bodies, however, in the absence of rules forbidding minority reports rarely refuse to receive such reports when offered. In any case the majority report would be first considered, and if it is adopted the minority report is considered as rejected; but if the majority report is not accepted then the minority report is considered.⁶⁶ At the same time, it is usually in order to move to substitute the minority report for the majority report.

Furthermore, for a considerable period of time the House of Representatives in Iowa has had a rule that "when any matter is referred to a standing committee by motion of any member, it shall be the duty of the chairman of such standing committee to notify such member of the time of the sitting upon such matter referred, and such member shall be permitted to confer with such committee during their consideration of such matter, but no one not a member of the committee shall be present when the final vote is taken on any matter under consideration, and no final action shall be taken by the committee upon any bill on the day of public hearing thereon."⁶⁷

Public hearings are not required, and a committee may refuse to admit anyone to its deliberations — except as required by the rule above stated. Interested persons often ask permission to present their views before a committee, and sometimes a committee invites persons to appear; but committee meetings are not public in this State

in the sense that any person may attend without special permission or invitation. In recent years there has been some demand for open committee meetings, for voting by roll call instead of by secret ballot, and for the publicity of roll calls.⁶⁸

Prior to 1870 committee reports appeared in many forms. In the session of 1840-1841 a committee of the Council recommended that a certain bill "be laid upon the table, and that no further action be had thereon."⁶⁹ In the Fourteenth General Assembly a committee asked to be discharged from further consideration of the subject, and recommended that the friends of the petition be permitted to withdraw the same.⁷⁰ In 1870 a concurrent resolution was adopted standardizing committee reports as follows:⁷¹

.....File No.....
 Report of Committee.....
 Mr.....
 Your Committee
 on
 to whom was referred the following bill.....File No.
 A bill for an act.....

 beg leave to report that they have had the same under considera-
 tion, and have instructed me to report the same back to the
with the recommendation

This form of report is substantially followed in both houses at the present time.

Experience has shown that wide discretion in regard to committee reports is not always wise: for chairmen have been known to prevent favorable action on bills by failing to call the committee together or by refusing to

submit certain measures when the committee has assembled. The House journal of the Fifth General Assembly records a resolution "that the Committee on Judiciary be required to report such Bills and other matters which may have been referred to them, for the action of this House, without further delay."⁷² Such a demand was probably not made without justifiable cause. Recently the chairman of a committee said of a bill, which had unanimously passed one house and had been referred to his committee: "I put it in my pocket and did not even call the committee together to consider it, for I was sure that they would have recommended it for passage."

Complaints that bills were being pocketed led to the adoption of rules prescribing the time within which a report must be made. Thus the House of the Thirty-sixth General Assembly had a rule directing each committee "to report back all bills in its hands within ten days after the order of reference unless longer time is granted by a vote of the house";⁷³ while in the Senate the rule required bills to be reported back within fifteen days.⁷⁴ In neither case, however, did the rule apply to appropriation bills. That the rule is not strictly followed in practice has been shown by Mr. Patton in his paper on the *Methods of Statute Law-making in Iowa*. (See pp. 222-225 of this volume.)

The right of a committee to report at any time is not the privilege of the most important committees in the General Assembly of Iowa. In the Senate the rules permit only the committee on engrossed bills, the committee on enrolled bills, the committee on rules, and the committee on printing to report at any time when no member is addressing the Senate;⁷⁵ while the House extends the privilege only to the committee on engrossed bills and the committee on enrolled bills.⁷⁶

VI

STANDING COMMITTEES IN THE LEGISLATURE OF IOWA 1838-1915

THE standing committees of the Senate and House, arranged historically, reflect the questions which have from time to time confronted the members of the legislature in Iowa. Thus the accompanying tables disclose the origin of many legislative problems in this State. It is also interesting to note that in both houses there are committees which have had an unbroken history since the organization of the Territorial government in 1838 — such as the committees on judiciary, on schools, on roads, on military affairs, and on claims. On the other hand it appears that names have changed, while the functions of the committees have remained the same. Thus the committee on appropriations was formerly designated as the committee on expenditures.

A good illustration of how a committee may continue to exist long after it has ceased to function is shown in the history of the committee on township and county organization. This committee, which was established in the House in 1846 and in the Senate in 1858, took its rise, no doubt, in the struggle for supremacy between the county judge system and the supervisor and commissioner types of local government. When a system of local government had become firmly established, the committee was abolished in the Senate in 1888. The House, however, has continued its committee on township and county government down to the present time, al-

though no change in the system of local government was seriously considered for a period of more than twenty-five years. The arraignment of the system of local government by Governor Clarke in 1915 was probably the immediate occasion for the reestablishment of a committee on county and township affairs in the Senate.

During the Territorial period the number of members of the House of Representatives was twenty-six, while the Council (upper house) had but thirteen. At the first session of the Legislative Assembly the House had thirteen standing committees, while the Council had fourteen. By the end of the Territorial period the number of standing committees in the House had been increased to sixteen and the number of Council committees to seventeen. With the beginning of the State period changes in the number and in the size of the committees are noticeable. To-day the House of Representatives, which is composed of one hundred and eight members, maintains sixty-one standing committees; and the Senate with fifty members keeps up forty-three standing committees.

In most cases the House of Representatives has divided where the Senate has consolidated committees. Thus the House has committees on Board of Control, on State educational institutions, and on each of the institutions under the Board of Control and the State Board of Education, making a total of eleven committees; while the Senate covers the same field with three committees on Board of Control, educational institutions, and penitentiaries and pardons. In like manner the House has separate committees on congressional districts, on judicial districts, on senatorial districts, and on representative districts; whereas the Senate has placed these subjects of legislation in the hands of two committees.

TABLE I—SHOWING NUMBER OF MEMBERS OF STANDING COMMITTEES OF THE COUNCIL IN THE LEGISLATIVE ASSEMBLIES OF THE TERRITORY OF IOWA

TABLE II — SHOWING NUMBER OF MEMBERS OF STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES IN THE LEGISLATIVE ASSEMBLIES OF THE TERRITORY OF IOWA

Names of the Legislative Assemblies.....	1 L. A.	2 L. A.	Extra	3 L. A.	4 L. A.	5 L. A.	6 L. A.	Extra	7 L. A.	8 L. A.
Years of the Sessions.....	1838-39	1839-40	1840	1840-41	1841-42	1842-43	1843-44	1844	1845	1845-46
Number of Representatives.....	26	26	26	26	26	26	26	26	26	26
Number of Committees.....	13	13	15	14	15	15	16		15	16
1 Judiciary	5	5	5	5	5	5	5		5	5
2 Common Schools	5	5	5	5	5	5	5		5	5
3 Internal Improvements	4	5	5	5	5	5	5		5	5
4 Military Affairs	5	5	6	5	5	5	5		5	5
5 Claims	5	5	5	5	5	5	5		5	5
6 Enrollments	2	4	2	4	2	2	2		2	2
7 Expenditures	5	5	5	5	5	5	6		5	5
8 Territorial Affairs	5	5	5	5	5	5	5		5	5
9 Roads and Highways.....	5	5	5	5	5	5	5		5	5
10 Elections	5	5	5							
11 Township and County Boundaries.....	5	5	5	3	5	5	6		5	5
12 Corporations	5	5	5	3	5	5	5		5	5
13 Vetoes	5									
14 Engrossed Bills		2	2	2	2	2	2		2	2
15 Public Buildings			5	5	5	5	5		5	5
16 Finance			5	5			5			
17 Agriculture					5	5	6		5	5
18 Memorials					10	10				
19 Library							5			
20 Ways and Means									5	5
21 New Counties										5

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12 G. A.	18 G. A.	14 G. A.	Adj. Sec.	15 G. A.	16 G. A.	17 G. A.	18 G. A.	19 G. A.	20 G. A.	21 G. A.	22 G. A.	23 G. A.	24 G. A.	25 G. A.	26 G. A.	Extra	27 G. A.	28 G. A.	29 G. A.	30 G. A.	31 G. A.	32 G. A.	Extra	33 G. A.	34 G. A.	35 G. A.	36 G. A.	
1868	1870	1872	1873	1874	1876	1878	1880	1882	1884	1886	1888	1890	1892	1894	1896	1897	1898	1900	1902	1904	1906	1907	1908	1909	1911	1913	1915	
49	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50		
12	37	39	39	42	43	44	46	46	48	50	38	38	39	39	41	41	39	39	40	40	40	40	2	39	40	42	43	
	2			6	7										39	42	20	35	35	40	46	50	45		50	50	50	50
9	9	9	9	11	12	14	15	21	15	15	13	15	15	15	15	16	16	16	16	16	16	17		20	20	20	28	1
5	5	5	5	5	5	5	8	3	3	8																		2
5	5	5	5	5	5	5	5	6	5	5	5	5	5	9	7	7	7	7	7	7	7	7		7	5	5	5	8
5	5	5	5	5	7	5	3	10	11	11	9	9	9	9	9	9	9	9	9	9	9	9		11	11	17	20	4
3	3	3	3	3	8	3	2	2	3	8	3	8	3	8	3	8	3	8	3	8	3	8		4	8	8	8	5
7	7	7	7	7	9	9	7	8	9	11	9	9	9	12	11	11	11	11	11	11	11	11		14	15	19	19	6
7	7	7	7	7	5	6	5	6	5	5	5	5	5	6	9	9	9	9	9	9	9	9		9	9	8	9	7
5	5	5	5	5																								8
3	3	3	3	8	8	3	2	3	3	3	3	8	8	8														9
3	3	3	3	8	8	3	2	2	8	3	8	3	8	3	8	3	8	3	8	3	8	3		4	8	8	8	10
5	6	5	5	5	5	5	5	5	5	7	5	5	5	6	5	5	5	5	5	5	5	5		5	6	7	6	11
5	5	5	5	5	5	5	5	6	5	5	7	7	7	6	7	7	7	7	7	7	11	11	11	14	11	11	11	12
7	7	7	7	7	9	7	5	16	14	13	11	11	11	15	11	11	11	11	16	16	16	16		17	19	18	19	18
3	5	5	5																									14
5	5	5	5																									15
9	9	9	9	9	10	11	11	14	15	14	13	15	15	15	16	20	16	16	16	16	16	16		18	21	22	18	16
7	5	5	5	5	7	7	5	7	7	7	7	7	7	9	7	7	7	7	7	7	7	7		7	7	7	5	17
5	5</																											

THE COMMITTEE SYSTEM

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Continued

12 G. A.	13 G. A.	14 G. A.	Adj. Sec.	15 G. A.	16 G. A.	17 G. A.	18 G. A.	19 G. A.	20 G. A.	21 G. A.	22 G. A.	23 G. A.	24 G. A.	25 G. A.	26 G. A.	Extra	27 G. A.	28 G. A.	29 G. A.	30 G. A.	31 G. A.	32 G. A.	Extra	33 G. A.	34 G. A.	35 G. A.	36 G. A.		
1868	5	5	5	5	5	3	8	8	8	8	8	8	8	8	5	5	5	5	5	5	5	5		6	5	5	5	37	
	5	5	5	5	5	7	8	6	5	5	7	7	7	6	7	7	7	7	7	7	7	7		8	7	10	12	38	
	5	5	5	5	5	5	8	6	5	5																	39		
	5	5	5	5	7	7	5	10	11	11	9	9	9	12	13	13	13	13	13	13	13	13		14	12	12	12	40	
	5	5	5	5	7	7	5	5	6	5	5																41		
	7	7	7	5	7	5	5	7	5	5	5	5	5	6	7	7	7	7	7	7	7	7		8	8	7	42		
	12	12	9	5	5	9	18	5	5	11																	43		
	6	5	5	6	7	5	5	5	5																		44		
					9	9	9	7	10	13	13	13	15	15	15	15	15	16	16	16	16	16	17	17	18	20	20	45	
					5	5	5	3	5	5	5																46		
					5	5	5	8	4	5	4																47		
					5	5	5	3	4	5	5																48		
					9	7	5	5	9	8	7	7	7	12	11	11	11	12	12	12	12	12		13	13	14	17	49	
					5	5	5	3	8	5	3	8	8	3	8	8	8	3	5	5	5	5		6	7	9	11	50	
					5	7	7	11	11	11	9	9	9	12	13	13	15	15	15	15	15	16		15	17	20	20	51	
				7																							52		
					9	9	9	9	9	9	7	7	7	6	7	7											53		
					5	3	4	5	5																		54		
					8	4	5	5	5	5	5	5	5	5	5	5	5	9	9	9	9		4	4	4	4	55		
					5	4	6	5																			56		
					7	9																					57		
							11	11	9	9	9	9	9	9	9	9	9	9	9	9	9	9		11	11	10	11	58	
							9																				59		
							9	9	9	9	12	9	9	9	9	9	9	9	9	9	9	9		10	11	10	10	60	
							9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9		9	8	15	13	61	
							9	9	9	9	11	11	11	11	11	11	11	11	11	10				11	11	10	14	62	
							7	7	7	9	11	11	11	11	11	11	11	11	11	10				11	12		63		
							7	7	6	9	11	11	11	11	11	11	11	11	11				11	8	8	7	64		
							5	5	5	6	5	5	5	9	9	11	11	11	11				10	8	8	8	65		
								11	11	12	11	11	11	11	11	11	11	11	11				11	10	8	7	66		
								5	9	9	9	9	9	9	9	9	9	9	9				8	7	9	8	67		
									3	8	3	5	11	11	11	11	11	11				12	10	8	5	68			
									15	15																	69		
									11	11	9	9	9	9	9	9	9										70		
											11	11	11	11	11	11							12	10	8	9	71		
																								9	12	12	72		
																									13	11	73		
																									16	11	74		
																										11	75		

STANDING COMMITTEES OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF IOWA

	12 G. A.	13 G. A.	14 G. A.	Adj. Sen.	15 G. A.	16 G. A.	17 G. A.	18 G. A.	19 G. A.	20 G. A.	21 G. A.	22 G. A.	23 G. A.	24 G. A.	25 G. A.	26 G. A.	Extra	27 G. A.	28 G. A.	29 G. A.	30 G. A.	31 G. A.	32 G. A.	Extra	33 G. A.	34 G. A.	35 G. A.	36 G. A.
99	1868	1870	1872	1873	1874	1876	1878	1880	1882	1884	1886	1888	1890	1892	1894	1896	1897	1898	1900	1902	1904	1906	1907	1908	1909	1911	1913	1915
43	44	44	44	41	42	43	43	48	48	47	55	53	53	52	52	55	55	54	54	54	53	53	55	1	60	62	61	61
1	1				7			9	12	11	11	21	30	24	25	35		33	36	36	42	49	36		38	42	42	42
12	12	13	13	14	18	21	23	25	19	19	17	17	17	21	17	17	19	24	26	23	23	18		24	26	27	28	1
12	12	12	12	13	17	21	17	19	16	16	17	13																2
9	9	6	6																									3
11	11	6	6	6	6	13	9	11	9	10	16	16	16	16	13	13	16	12	13	15	15	19		14	12	10	10	4
8	8	9	9	8	10	13	11	14	13	13	12	12	12	14	12	12	14	16	15	13	12	20		16	11	8	10	5
4	2	3	6	4	4	6	5	5	5	5	7	7	7	7	9	9	9	8	8	9	9	7	7	10	9	11	11	6
9	9	10	10																									7
7	7	6	6	8	11	17	11	22	15	15	16	16	16	20	15	15	18	21	24	28	28	34		38	38	38	36	8
6	6	4	4	6	6	9	7	8	9	9	13	6	12	10	11	11	15	15	14	16	16	38		31	27	17	20	9
10	10	6	6																									10
3	3	3	3	4	4	6	5	5	5	5	7	7	7	7	11	11	10	7	8	7	7	5		8	7	6	6	11
9	9	10	10	12	12	17	15	17	12	12															8	8		12
9	9	11	11	12	15	21	19	25	15	17	17	16	16	23	15	15	24	21	19	32	35	40		43	40	39	39	13
5	5	6	6	6	5	11	10	12	11	11	13	12	13															14
10	10	9	9	12	11	25	20	21	18	12	17	17	20	20	20	20	24	25	28	33	34	42		42	41	39	40	15
7	7	5	5																									16
8	8	7	7	15	13	21	14	14	8	11	12	12	12	12	12	12	13	13	12	10	10	8		11	8	7	10	17
																												18
6	6	4	4																									19
10	10	9	9	6	6	17	11	6	5	7	14	13	13	14	12	12	11	9	8	9	9	8		10	9	11	11	20
																												21
9	9	6	6																									22
8	8	6	6	8	8	15	9	10	7	7															13	8		23
17	17	20	20	27	17	23	19	23	20	20	17	17	16	16	17	17	23	30	30	31	34	37						24
7	7	4	4	6	8	13	9	11	11	12	15	14	14	15	16	16	20	23	25	29	27	31		34	28	22	23	25
8	8	7	7	8	7	17	13	18	9	9	11	11	11	12	13	13	13	11	14	18	18	17		11	14	13	13	26
7	7	3	3	4	3	9	9	9	7	8	14	13	14	16	12	12	15	17	15	18	18	23		23	26	13	13	27
7	7	6	6	7	7	12	9	10	8	9	11	11	11	12	11	11	11	12	12	13	12	12		11	10	9	9	28
5	5	3	3	4	4	7	5	7	5	6	10	10	10	10	10	10	11	7	11	8	8	7		8	8	12	12	29
5	5	10	10	13	16	17	11	19	8																			30
6	6	15	15	14	5	9	7	18	12	18	16	16	16	16	11	11	10	11	27	15	15	12		10	10	6	6	31
5	5	5	5	6	8	11	7	8		8	13	12	12	12	10	10	9	11	8	10	9	10		12	9	9	9	32
12	12	5	5	4	7	9	9	13	5	15	18	17	18	16	13	13	11	10	11	13	13	9		9	8	7	7	33
7	6	10	10	12	14	17	11	16	12	13	17	17	16	17	19	19	17	17	17	19	18	27		24	22	13	13	34
																												35
6	6	7	7	8	10	19	15	16	12	13	15	15	16	16	12	12	13	13	16	13	18	16		19	8	7	7	36
7	7	9	9	10	11	15	11	15	13	13	14	14	13	13	12	12	16	14	20	15	14	16		17	14	13	14	37
6	6	8	8	8	9	13	9	9	11	17	17	15	12	10	10	14	9	10	10	10	11		17	8	6	6	38	
5	5	6	6	6	7	13	9	9	7	7	9	9	9	9	13	13	15	8	8	9	8	11		9	7	7	7	39
5	5	6	6	10	10	15	9	13	9	9	12	12	12	14	15	15	15	10	16	13	12	22		23	11	9	9	40
5	5	8	8	8	9						13	13	13	13	11	11	15	13	10	10	10	17		13	7	13	11	41
5	5	5	5	6	7	13	7	8	7	9	11	11	11	12	11	11	11	8	8	8	8	8		10	7	7	7	42

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[illegible]

VII

COMMITTEE PATRONAGE

AN abuse of the committee system has resulted from the willingness of legislatures to create committees for the sake of patronage. Prior to 1870 the journals of the legislature in Iowa show only rare and occasional employment of committee clerks. After that date, however, the number increased rapidly in both houses. In 1906 the number of committee clerks reached forty-nine in the House; later it was reduced to thirty-six; and for the last three sessions it has been forty-two. The Senate seems to have outdone the House in the matter of the employment of help: during the last four sessions each Senator has been authorized to employ a committee clerk.

It has been repeatedly charged that much of this clerical help was unnecessary. As far back as 1878 Senate clerks were directed by resolution to report to the secretary of the Senate for assignment of duty when not required for actual committee service;⁷⁷ and in 1882 they were directed under penalty of reduced compensation to remain in the Senate chamber while the Senate was in session.⁷⁸ On February 27, 1888, a resolution was adopted providing for the appointment of a committee to ascertain the number of committees that had no further use for clerks so that they might be discharged.⁷⁹ The committee was duly appointed, but there seems to be no evidence in the journal that it ever made a report.

The Senate journals show very clearly the steps by which the custom of providing a clerk for every Senator

developed. In 1880 the rules were amended so as to permit committees to employ a clerk by a majority vote of the whole committee. A clerk chosen by a committee could likewise be dismissed by a majority vote of the whole committee.⁸⁰ At this time (1880) there were fifty members of the Senate and forty-six committees; by 1886 the number of committees had increased to fifty, making possible a chairmanship and a clerk for every member. In 1888 reform seems to have seized the Senate and the number of committees and committee clerks was reduced to thirty-eight. But this condition did not persist: the number of committee clerks gradually increased so that in 1915 there were forty-four.

In 1896, when the Senate committees numbered forty-one, a resolution was adopted providing "that the Senators not provided with committee clerks be allowed to appoint one clerk, who shall be clerk for the whole number of said Senators. Said clerk to receive the same per diem as other committee clerks."⁸¹ In 1898 the Democratic members were allowed one⁸² and in 1902 two committee clerks.⁸³

A resolution in 1904 provided "that the chairman of each committee [shall] have power to appoint the clerk for his respective committee." At this session, although there were forty Senate committees, it was found necessary to pass a special resolution allowing a committee clerk to each of the two Republican Senators who did not receive a committee chairmanship.⁸⁴ In 1909 it was provided that each Senator not given a chairmanship should be allowed a committee clerk.⁸⁵ Since that time each Senator has been authorized to appoint a committee clerk. Moreover, the Senate of the Thirty-fourth General Assembly insisted in its resolution that all committee clerks

be competent stenographers "and of good moral character."⁸⁶ Subsequent resolutions have prescribed that they be competent stenographers and be tested for proficiency before being sworn in.⁸⁷

In 1915 the efficiency engineers employed by the joint committee on retrenchment and reform recommended the reorganization of the committee clerk system and a reduction in the number to be employed. This report, so far as it concerns committee clerks, reads as follows:

The number of Committee Clerks for the 36th General Assembly to be fixed at 45, to be under the direct charge of one of their number, who is to be designated the Chief Committee Clerk, and whose duty it shall be to enforce working hours and to assign clerks to the various committees, and also to members, as and when required. The 35th General Assembly employed 50 clerks for the Senate with 43 committees, and 40 clerks for the House of Representatives with 62 committees; and assuming that 45 clerks should be sufficient to handle the whole of the business of both houses — 18 being directly assignable to the Senate and 26 to the House of Representatives. The fact that a number of committee clerks were practically idle for a large amount of their time during the session of the 35th General Assembly serves to substantiate the need for this curtailment, particularly as a number of these clerks had to resort to bridge parties during the afternoons in order to while away their time.⁸⁸

Governor Clarke in his message to the Thirty-sixth General Assembly severely condemned the practice of hiring extra legislative help, which he characterized as "pure unadulterated 'graft' ". He referred to the employment of clerks in these words:

Every man of legislative experience knows that many more committee clerks and other clerks are employed than are needed. Every senator and representative knows of clerks sitting around

these chambers in luxurious ease from one end of the session to the other, doing practically nothing at all, and every senator and representative knows that such a thing should fall under his condemnation.⁸⁹

A member of the Senate, becoming indignant at the Governor's imputation of graft, offered on January 14th a resolution providing for a committee to investigate the foundation of these charges.⁹⁰ The resolution was called up and adopted on January 20th; five Senators were named on the committee.⁹¹ Governor Clarke refused to recede from his implications. Indeed, he issued a hot retort to the Senate in the form of a letter, in which, among other things, he stated that the Senate was violating the law in employing a stenographer for each Senator instead of one for each committee. And he added these words:

There are forty-six committees and is it not a fact that at least twenty of them will not have an occasion to meet, on an average, five times during a session? Is it not a fact that the large number of committees were originally created to give place for as many clerks as possible? If the clerks employed were restricted to committee clerks and to committee work, as the law provides, would not twenty-five in place of fifty be all that could possibly be given work? If there were a clerk to each of the forty-six committees, to do committee work, is it not apparent that at least twenty or more of them would be idle three-fourths of the time or more? Is it not a fact that many more than half of the clerks have no employment for more than half of the time even when the senate is not in session? Is it not the experience of senators that many of the clerks are often absent from the Capitol because they are not needed? On investigation you may not be able to answer these and other questions directly, but do you not find that they state substantially the facts? Are not doorkeepers, clerks, janitors and even pages given places for political reasons?⁹²

This letter when read in the Senate gave rise to considerable comment, and had the effect of arousing serious thought on the question. The Senate showed its attitude by adopting a resolution on February 4th calling upon the committee to investigate State House salaries. Senator Gillette announced that he was preparing a bill to reduce the salaries of committee clerks and others. Two members of the committee threatened to resign. Senator Allen stated that he could see absolutely no use for twenty-five of the fifty committee clerks. As a result of this statement the committee decided to make out a list of questions to be addressed to each Senator.⁹³

The information gained by the committee probably aided considerably in arriving at the conclusions embodied in the report submitted to the Senate on February 16th, in which it was declared that a reduction of the number of committee clerks was not advisable under the present scheme of committee organization. There was proposed, however, a new plan of organization according to which the committees would be grouped under seven heads. Each group was to consist of permanent subcommittees making in all only twenty-one units in place of the forty-three existing committees. It was believed that if such a plan were carried out in detail "the work now done by committee clerks could be well and efficiently handled by a corps of stenographers under the direction of an expert and experienced person, familiar with bill drafting and its requirements, and that it would probably be unnecessary to employ more than twenty-five such stenographers for the conduct of the work of their department with efficiency and dispatch."⁹⁴ The report of the committee was adopted and the committee discharged on February 25th.⁹⁵

The outcome of the committee's investigation was the discovery of several superfluous employees, whose dismissal was promptly recommended. At the same time the committee felt it inadvisable to dispense with any of the fifty committee clerks under the present scheme of committee organization; and they declared that the expression "pure unadulterated graft" as used by the Governor in his message was "an unhappy choice of words to express the thought which the Governor's reply to your committee shows he had in his mind, and that it was unwarranted by the facts as they have been disclosed to this committee."⁹⁸ (For a discussion of committee patronage see also Mr. Pollock's paper on *Some Abuses Connected with Statute Law-making* in this volume, pp. 665-670.)

That there was, however, some foundation for the Governor's statement that nearly half of the committees would have little occasion to meet is shown by the accompanying table, from which it appears that four committees had no bills referred to them, five had but one bill each, and thirteen others had less than an average of ten bills referred to them.

TABLE V — SHOWING NUMBER OF MEASURES REFERRED TO COMMITTEES IN THE SENATE

Name of Committee	Number of Members on Committee				Number of Measures referred to Committee			
	83rd G. A.	84th G. A.	85th G. A.	86th G. A.	83rd G. A.	84th G. A.	85th G. A.	86th G. A.
Ways and Means.....	18	21	23	18	25	86	28	26
Judiciary	20	20	20	No. 1 12 No. 2 11	156	149	180	No. 1 92 No. 2 98
Appropriations	18	20	20	20	82	57	88	51
Railroads	17	22	25	22	17	19	31	26
Agriculture	17	19	18	19	84	19	27	31
Cities and Towns.....	15	17	20	20	58	47	69	78
Schools (Public)	14	15	19	19	10	25	48	37
Public Health	11	11	10	12	26	25	19	13
Banks (and Banking 1915).....	14	15	16	15	15	11	12	14
Insurance	18	13	14	17	12	16	10	16
Telegraphs and Telephones.....	12	10	8	8	4	0	1	4
Corporations	10	8	8	8	8	5	9	4
Suppression of Intemperance.....	14	12	12	12	8	12	14	21
Labor	10	11	10	9	3	4	7	8
Highways	11	11	17	20	16	14	21	33
Elections	11	11	12	13	20	11	30	16
Public Libraries	12	10	8	5	0	1	7	4
Educational Institutions	9	8	15	18	4	2	12	7
Charitable Institutions	9	7	7	5	8	6	3	0
Printing	10	9	9	8	6	4	3	4
Mines and Mining.....	11	11	10	11	2	7	3	4
Constitutional Amendments & Suffrage.....	11	12	12*	13	3	2	9	5
Congressional and Judicial Districts.....	11	10	8	7	0	3	5	1
Senatorial and Representative Districts.....	11	8	8	7	0	2	0	0
Military	10	9	8	9	10	9	10	11
Compensation of Public Officers.....	8	8	7	8	24	19	16	8
Pharmacy	8	7	9	8	6	12	6	5
Commerce and (Retail) Trade.....	6	7	7	7	1	4	7	1
Penitentiaries and Pardons.....	8	7	10	11	3	3	8	7
Claims	7	5	5	5	8	5	9	11
Federal Relations	7	7	7	5	0	1	0	0
Manufactures	7	7	12	13	3	3	0	1
Public Buildings	6	6	7	6	0	0	1	1
Horticulture and Forestry.....	6	5	5	5	2	3	2	1
Fish and Game.....	6	7	9	11	14	8	12	10
Rules	4	4	4	4	1	1	2	0
Public Lands	4	6	6	6	1	0	1	2
Engrossed Bills	4	3	3	3	Not counted			
Enrolled Bills	4	3	3	3	Not counted			
Public Utilities		13		11			6	3
Board of Control and Its Institutions.....		9	11	12		5	26	14
Food and Dairy.....			16	11			15	9
County and Township Affairs.....				11				33
Total Number of Committees.....	89	40	42	48				

*Suffrage left off.

§Committee dropped.

VIII

CRITICISMS OF THE COMMITTEE SYSTEM

THE value of the committee system when efficiently and conscientiously administered can scarcely be overestimated. Through the method of hearings, it not only acquaints the members of the legislature with the nature of proposed legislation, but also gives them some idea as to the extent of the public demand for such measures. It operates as a wholesome check upon hasty and ill-considered legislation.⁹⁷ In spite of the adverse criticisms that have been directed against it the committee system is regarded by many as "an absolute necessity for a legislative body which does not restrict the right of initiation of its individual members, and confer upon some set of persons sole power to bring in important bills."⁹⁸ One writer declares that the committee system was adopted to escape the evils of one man control. But in practice some unifying influence has been found necessary in legislation; and in this necessity lies the whole secret of the speaker's position and power.

No one, perhaps, has stated the objections to the committee system more clearly than James Bryce, who, after pointing out that the deliberations of the committees are usually secret and that the formal reports of the committees do not show how the members voted, says of the system that it "destroys the unity of the House as a legislative body"; that it "prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important"; that it "cramps de-

bate"; that it "lessens the cohesion and harmony of legislation"; that it "gives facilities for the exercise of underhand, and even corrupt influence"; that it "reduces responsibility"; and that it "lowers the interest of the nation in the proceedings" of the legislature. At the same time he comes to the conclusion that "were the committees abolished and no other organization substituted, the work could not be done."⁹⁹

Another critic has offered objections to the committee system in the following words:

From the standpoint of practical politics, the most serious disadvantages arise from the following circumstances: The deliberations of committees are usually secret ordinarily no record is kept of committee sessions, and of how each member votes. Consequently it is difficult, if not impossible, to fix responsibility for what takes place in the committee room. The public ordinarily knows little or nothing of committee deliberations. In strict parliamentary practice, no member is permitted to allude in the house to anything which has taken place in committee. It is largely owing to this secrecy that the legislative committees are subjected at times to tremendous pressure of private interests, so that the bills which they finally report to the House are often little more than the combined concessions to eager advocates who make their direct personal appeals to the committees concerned. Abundant opportunity is offered for underhand and corrupt influences to be brought to bear upon committeemen.¹⁰⁰

It has been declared that the committee system lacks unity; that committees act independently of each other; that the speaker appoints members but can not remove them; that bills appropriating money are recommended by committees having no responsibility for providing new sources of revenue; and that powers of legislation are

exercised by men who are not responsible to the country at large.

Complaints have been directed against what are considered as unwarrantable delays in making committee appointments, and against the needless enlargement of important committees which renders deliberation impossible. The abolition of the sub-committee, which has been characterized as a means for keeping other members in the dark in regard to important subjects, has been recommended. Finally, there appears to be little defence of the practice of giving the defeated caucus candidates for the speakership the chairmanships of the most important committees.

IX

SUGGESTED REFORMS IN THE COMMITTEE SYSTEM

SECRECY of proceedings being among the chief objections to the committee system, publicity has been proposed as a remedy. It is declared that the enforcement of rules requiring the keeping and publishing of the records of committee meetings, requiring the meetings of committees to be thrown open to the public, and requiring due notice of the time and place of meetings would go far toward removing many of the objectionable features of the committee system.¹⁰¹

Nor is the publicity remedy untried. In Massachusetts "committee hearings are a very important part of legislative action. Notice of all hearings is given in the public press, and the committee meetings are well attended, not only by people who have an axe to grind but by citizens of the State who interest themselves in legislative reforms. All testimony brought before the committees is carefully weighed; in fact, the legislature and its committees assume rather a judicial attitude. Petitions are brought before them, testimony is given, arguments are made, and they in general decide the matter impartially upon the basis of all these considerations."¹⁰² Moreover, in 1911 Wisconsin enacted legislation requiring the keeping of complete records of all legislative committee meetings, including the votes of committee members on all bills and amendments. Thus through publicity the responsibility of legislators in that part of

their work which is most significant and effective is greatly stimulated.¹⁰³

Assuming that the most important objection to the committee system is the lack of unity and harmony in legislation, other critics propose, as a remedial measure, that a central directive committee be given control over all other committees. Such a committee it is claimed would be able to prevent conflicting and contradictory legislation without altering greatly present methods and procedure.¹⁰⁴ Indeed, some such idea as this seems to underlie the plan adopted in Nebraska in 1915, where the speaker of the House, the chief clerk, and the director of the legislative reference bureau were constituted a committee to revise all bills, after first reading, in order to avoid duplication. During the session all House bills were revised by this committee, and with the consent of the authors many of them were entirely rewritten with a view to securing greater clearness, brevity, and harmony with existing laws and legislative rules.¹⁰⁵

SUGGESTED REORGANIZATION OF THE COMMITTEE SYSTEM IN IOWA

Since the two houses of the General Assembly are practically coördinate and since the coöperative action of both houses is required in the enactment of laws, the adoption of a system of joint committees with permanent sub-committees is suggested as the most practicable solution of the committee problem. That the joint committee system is worthy of serious consideration is evidenced by the fact that it received the endorsement of the great parliamentarian, Thomas B. Reed.

The proposed joint committees should be composed of not to exceed twenty-one members — House members be-

ing in the majority. Appointments might be made by the presiding officers of the houses or by a committee on committees in each house. Each committee should be required to keep a journal of its proceedings in which should be recorded the votes of members on all matters considered. As an illustrative plan for the system in Iowa the following joint committees are suggested:

Ways and Means or Finance.— This committee would be a consolidation of the present ways and means committee and the appropriations committee — as was the case in the Senate down to 1874. Thus, coördination between the two great branches of finance — income and expenditure — would be established. Under the present system the General Assembly is asked to spend money by committees which have no responsibility in recommending sources of revenue. Claims, being largely a matter of appropriations, should be included in this committee.

Judiciary.— A consolidated judiciary committee should include the present committee on constitutional amendments.

Educational Institutions.— Besides the institutions of higher learning, public schools and public libraries should come within the scope of this committee. The members of such a committee would not be expected to be educational experts.

Penal and Charitable Institutions.— This committee should include the present committees on Board of Control, on all the institutions under the Board of Control, on pardons, and on charitable institutions.

Railroads and Public Utilities.— All public utility interests, including railroads, telegraphs, telephones, and express should be handled by this committee.

Corporations.— Such a committee should include the

present committees on banks, corporations, insurance, and building and loan associations.

Agriculture.—Horticulture, animal industry, bee and poultry culture, as well as agriculture, should be included in the scope of this committee.

Highways.—The tendency of the States to take a more active and direct part in highway construction will justify a committee on this subject—at least for the present.

Local Government.—This committee would include the present committee on cities and towns and the committee on county and township affairs. If the committee were well balanced the interest of both rural and urban governments would be preserved.

State Affairs.—The jurisdiction of a committee on State affairs would include such subjects as elections, printing, senatorial and representative districts, congressional and judicial districts, public buildings, Federal relations, compensation of public officers, and public accounting.

Social and Economic Interests.—This committee would have to deal with proposed legislation on labor, commerce, manufactures, and mines and mining.

Public Health.—Dairy and food, suppression of intemperance, and pharmacy matters would logically come within the jurisdiction of this committee.

Conservation.—Fish and game, public lands, drainage, and forestry would be included in conservation.

Military Affairs.—The importance of military affairs seems to justify such a committee. At the same time the subject might be classed under State affairs.

Enrolled Bills, Engrossed Bills, and Rules.—These three subjects might well be confided to one committee.

Five members ought to be able to perform all the functions of this committee.

Each of the committees suggested above should be organized under a chairman, and with permanent sub-committees whenever called for by the volume and character of business. This would be in accordance with the practice in Congress.¹⁰⁶ At the present time there is no general authorization for sub-committees in the rules of either house of the General Assembly. Sub-committees when appointed are usually select, not permanent, and therefore cease to exist after reporting on the particular measures referred to them. The number of sub-committees in any committee would be determined entirely by the amount and nature of the subject-matter referred to such committee. Thus a committee of twenty-one might be divided into seven sub-committees of three members each, or into three sub-committees of seven members each. Such sub-committees would have ample opportunity of becoming thoroughly familiar with the subjects of legislation referred to them, and thus be in a position to make a carefully considered report to the full committee.

Under such an arrangement each committee would certainly need a clerk — in some instances several clerks could be used to advantage. Each member should have ample assistance in all of his legitimate legislative work.

All that has been suggested in this reorganization of committees could be accomplished by the legislature itself. The suggestions for a single-chambered legislative body or for a General Assembly greatly reduced in numbers would no doubt make the present problems of the committee system much simpler; but the amendment of the State Constitution is a slow process and members are

not prone to favor measures which would destroy their offices.

Moreover, the adoption of the budget system in State finance and the conferring upon the Governor of the right to veto special items in appropriation bills would lessen the demands of members for places on the committee which handles appropriations and also steady the committee in its recommendations.

The establishment of a legislative reference bureau, including a bill-drafting service, wherein all bills could be carefully examined before being taken up by the committees for consideration would greatly simplify the work of committees. To restrict the right of members to introduce measures seems undemocratic, but assemblies are sorely in need of expert service to quickly sort out the worthy from the unworthy measures introduced, and to give advice in constructive legislation. This, it is believed, can best be accomplished by the joint committee system when one hearing does for both branches and each house knows the arguments and testimony presented to the other. Such a system would simplify procedure and expedite business so that the necessity of a sifting committee in full charge during the closing days of the session would disappear.

NOTES AND REFERENCES

¹ Jameson's *The Origin of the Standing-Committee System in American Legislative Bodies* in the *Political Science Quarterly*, Vol. IX, p. 247.

² Jameson's *The Origin of the Standing-Committee System in American Legislative Bodies* in the *Political Science Quarterly*, Vol. IX, p. 247.

³ Quoted by Jameson in the *Political Science Quarterly*, Vol. IX, p. 248.

⁴ Ilbert's *Legislative Methods and Forms*, p. 104.

⁵ Bryce's *American Commonwealth* (edition of 1910), Vol. I, p. 156.

⁶ Bryce's *American Commonwealth* (edition of 1910), Vol. I, p. 157.

⁷ Bryce's *American Commonwealth* (edition of 1910), Vol. I, p. 159.

⁸ Wilson's *Congressional Government*, p. 102.

⁹ *Senate Journal*, 1852-1853, p. 142.

¹⁰ *Senate Journal*, 1856-1857, p. 139.

¹¹ *House Journal*, 1888, p. 453.

¹² Reed's *Parliamentary Rules*, p. 54.

¹³ Alexander's *History and Procedure of the House of Representatives*, p. 226.

¹⁴ *Council Journal*, 1840-1841, pp. 93, 98.

¹⁵ *Senate Journal*, 1870, p. 473.

¹⁶ Cushing's *Law and Practice of Legislative Assemblies*, p. 724.

¹⁷ Cushing's *Law and Practice of Legislative Assemblies*, p. 725.

¹⁸ Alexander's *History and Procedure of the House of Representatives*, p. 256.

¹⁹ Cushing's *Law and Practice of Legislative Assemblies*, p. 789.

²⁰ Reinsch's *American Legislatures and Legislative Methods*, p. 172.

In 1874 a joint committee of the House and Senate was created to inquire into the destitution caused by grasshoppers in northwestern Iowa.

²¹ Reed's *Parliamentary Rules*, p. 55.

²² Reinsch's *American Legislatures and Legislative Methods*, p. 173.

- ²³ Reed's *Parliamentary Rules*, p. 55.
- ²⁴ Reinsch's *American Legislatures and Legislative Methods*, pp. 179, 182.
- ²⁵ Reinsch's *American Legislatures and Legislative Methods*, p. 168.
- ²⁶ *Senate Journal*, 1892, p. 641.
- ²⁷ *House Journal*, 1909, pp. 1745, 1746; see also *The Register and Leader*, April 9, 1909, p. 1, column 1.
- ²⁸ *House Journal*, 1860, p. 600.
- ²⁹ *Senate Journal*, 1864, p. 525.
- ³⁰ *Senate Journal*, 1864, p. 552.
- ³¹ *Senate Journal*, 1870, p. 519. The journal shows no evidence of the appointment of the other members; but the committee made a report on April 12th.
- ³² *Senate Journal*, 1872, p. 450.
- ³³ *Senate Journal*, 1874, p. 308.
- ³⁴ *Senate Journal*, 1882, p. 391. As a matter of fact all but one of the members of the committee were chairmen.
- ³⁵ *Senate Journal*, 1884, p. 513.
- ³⁶ *Senate Journal*, 1884, p. 612.
- ³⁷ *Senate Journal*, 1886, p. 552.
- ³⁸ *Senate Journal*, 1886, p. 95.
- ³⁹ *Senate Journal*, 1888, p. 953. The Senator from Harrison had been a member of the sifting committee in the Twenty-first General Assembly and was also appointed in the Twenty-second.
- ⁴⁰ The committee obeyed their instructions and reported House File No. 542, a county uniform text-book law, in their first report. — *Senate Journal*, 1888, p. 986.
- ⁴¹ *Senate Journal*, 1892, p. 641.
- ⁴² Mr. Dalzell quoted in Reinsch's *Readings on American Federal Government*, p. 243.
- ⁴³ Follett's *The Speaker of the House of Representatives*, pp. 222-229.
- ⁴⁴ Follett's *The Speaker of the House of Representatives*, pp. 228, 229.
- ⁴⁵ Follett's *The Speaker of the House of Representatives*, p. 221.
- ⁴⁶ Alexander's *History and Procedure of the House of Representatives*, p. 66.

⁴⁷ It is a well known fact that the choice of a speaker is sometimes determined before the General Assembly meets. The caucus nomination and election in the House only confirms the choice previously determined by a canvass of the members-elect.

⁴⁸ During the Territorial period and under the first Constitution of the State, the presiding officer in each house was chosen by its own members, there being no Lieutenant Governor either in the Territorial period or under the Constitution of 1846. The Constitution of 1857 provided for a Lieutenant Governor, who was to be ex-officio president of the Senate.

On January 15, 1858, immediately after the first Lieutenant Governor of Iowa took the chair in the Senate, the following resolution was introduced: "*Resolved*, That the President be requested to appoint the Standing Committees of the Senate and that Mr. Coolbaugh who has not yet presented his credentials, be regarded as a Senator in the formation of the Committees." This resolution was amended by striking out all after the word "President" and inserting "Nominate the Standing Committees for the confirmation of the Senate." A substitute was then offered to empower the President to appoint all standing committees subject to the approval of the Senate. Mr. Kirkwood moved to amend the substitute by striking out the approval clause and inserting "for the present session." The substitute was adopted as amended.

Thus the first attempt to have the Senate determine the character and personnel of its own committees failed; and from that day to this the right of the president of the Senate to appoint the standing committees has been recognized. An amendment offered to the Senate rules in 1915 to have standing committees selected by a committee of seven, four of the majority and three of the minority, chosen in party caucus, and the appointments so made to be subject to the approval of the Senate was defeated by a vote of twenty-seven to seventeen.—*Senate Journal*, 1915, pp. 815, 816.

In the House of Representatives the speaker, being chosen by the members, has traditionally been entrusted with the appointment of the select and standing committees. A resolution introduced into the House in January, 1911, providing for the selection of a committee of nine members to make up the standing committees of the House was quickly defeated.—*House Journal*, 1911, p. 13.

⁴⁹ Follett's *The Speaker of the House of Representatives*, p. 222.

⁵⁰ In this connection see Hinds's *The Speaker of the House of Representatives* in the *American Political Science Review*, Vol. III, p. 155.

⁵¹ Alexander's *History and Procedure of the House of Representatives*, pp. 67, 68.

⁵² In 1886 there were fifty committees in the Senate, but the number was reduced to thirty-eight in the next session.

⁵³ The following are additional examples of instructions to committees:

Second Legislative Assembly, Special Session, 1840. "That the committee on judiciary be instructed to examine and compare the laws of Iowa with the statutes of Michigan and Wisconsin and report to this House whether there are any laws of a general nature in the statutes of Michigan or Wisconsin which have not been incorporated in the laws of Iowa."—*House Journal*, p. 14.

Second General Assembly, 1848-1849.—"That the Committee on Roads and Highways be, and they are hereby instructed to draft a general law upon the subject of Roads and Highways, and report the same to this House as soon as practicable"—*House Journal*, p. 282.

Seventeenth General Assembly, 1878.—"That the visiting committees to the several charitable institutions of the State be instructed to ascertain and report to the General Assembly the number of persons employed at each institution, the names of the persons employed, the salary paid to each, and the kind of service expected of each; also what each received, if anything, in addition to his salary in the way of board, rooms, fuel, lights, washing, etc., at the expense of the State, and also whether any of the families of employees are receiving board, etc., at the expense of the State, and if any, the facts in each case."—*Senate Journal*, pp. 38, 39.

Eighteenth General Assembly, 1880.—"Resolved by the Senate the House concurring, That there be appointed committees to visit the several State institutions, each of said committees to be composed of three members, one from the Senate and two from the House. Said committees to report to the General Assembly on or before the tenth day of February next. They shall examine and include in their report—

1st. Whether the appropriations made by the last General Assembly have been wisely and economically expended.

2d. Whether they have been expended for the objects appropriated.

3d. Whether chapter 67 of the acts of the Seventeenth General Assembly has been complied with, in not contracting indebtedness in excess of the appropriations.

4th. Whether there has been any diversion of any money from the specific purpose for which it was drawn out of the State treasury.

5th. Said committee shall also report the names and number of persons employed by the several institutions, for what purpose employed, and at what salary; also, whether any of the employed receive or have received anything in addition to salary, in the way of board, rooms, lights, fuel or clothing, or anything else, at the expense of the State.—*Senate Journal*, p. 34.

Twentieth General Assembly, 1884.—"That the Committee on Appropriations be requested to prepare and have printed a schedule of all appropriations recommended by said committee whenever all appropriation bills shall have been reported upon by said Committee."—*Senate Journal*, p. 347.

Twenty-fifth General Assembly, 1894.—“That the Committee on Ways and Means be requested to report to the Senate within three days an estimate of the amount of money available for extraordinary appropriations by the Twenty-fifth General Assembly under existing laws.”—*Senate Journal*, p. 375.

⁵⁴ *Senate Journal*, 1882, p. 118.

⁵⁵ *Senate Journal*, 1884, p. 80.

⁵⁶ Cushing's *Law and Practice of Legislative Assemblies*, p. 739.

⁵⁷ Cushing's *Law and Practice of Legislative Assemblies*, p. 742.

⁵⁸ Cushing's *Law and Practice of Legislative Assemblies*, p. 744.

⁵⁹ The attempt to oust press representatives from the meetings of the Senate committee on the suppression of intemperance failed by a tie vote.—See *The Register and Leader*, January 28, 1915.

⁶⁰ *Senate Journal*, 1915, p. 42.

⁶¹ Cushing's *Law and Practice of Legislative Assemblies*, p. 749.

⁶² Reed's *Parliamentary Rules*, Sec. 75, p. 61.

⁶³ *Senate Journal*, 1900, p. 414.

⁶⁴ Reinsch's *American Legislatures and Legislative Methods*, p. 170.

⁶⁵ *House Rules*, 1915, Sec. 61.

⁶⁶ Reinsch's *American Legislatures and Legislative Methods*, p. 170.

⁶⁷ *House Rules*, 1915, Sec. 57.

⁶⁸ See *The Register and Leader*, January 11, and 25, 1915.

⁶⁹ *Council Journal*, 1840–1841, p. 119.

⁷⁰ *House Journal*, 1852–1853, p. 168.

⁷¹ *Senate Journal*, 1870, p. 45.

⁷² *House Journal*, 1854–1855, p. 202.

⁷³ *House Rules*, 1915, Sec. 61.

⁷⁴ *Senate Rules*, 1915, Sec. 31-a.

⁷⁵ *Senate Rules*, 1915, Sec. 26.

⁷⁶ *House Rules*, 1915, Sec. 55.

⁷⁷ *Senate Journal*, 1878, p. 301.

⁷⁸ *Senate Journal*, 1882, p. 391.

⁷⁹ *Senate Journal*, 1888, p. 423.

⁸⁰ *Senate Journal*, 1880, p. 13.

⁸¹ *Senate Journal*, 1896, p. 40.

⁸² *Senate Journal*, 1898, p. 12.

⁸³ *Senate Journal*, 1902, p. 13.

⁸⁴ *Senate Journal*, 1904, p. 68.

⁸⁵ *Senate Journal*, 1909, p. 120.

Senate File No. 2 proposed to reduce the number of Senate clerks to forty; but this bill was reported without recommendation two days before adjournment.—*Senate Journal*, 1909, pp. 122, 1618.

House File No. 515 also provided a reduced number. It was recommended for passage, but was finally lost in the sifting committee.—*House Journal*, 1909, pp. 1247, 1341.

⁸⁶ *Senate Journal*, 1911, p. 9.

⁸⁷ *Senate Journal*, 1913, p. 8; *Senate Journal*, 1915, p. 8.

⁸⁸ Manuscript Report by Quail, Parker & Co., p. 10.

⁸⁹ *House Journal*, 1915, pp. 46, 47.

⁹⁰ *Senate Journal*, 1915, p. 74.

⁹¹ *Senate Journal*, 1915, pp. 134, 135.

⁹² *Senate Journal*, 1915, p. 210; *Register and Leader*, January 30, 1915, p. 2.

⁹³ *Register and Leader*, February 5, 1915.

⁹⁴ *Senate Journal*, 1915, pp. 372, 373.

⁹⁵ *Senate Journal*, 1915, p. 531.

⁹⁶ *Senate Journal*, 1915, p. 370.

⁹⁷ Beard's *American Government and Politics*, p. 535.

⁹⁸ Ashley's *The American Federal State* (revised edition), p. 256.

⁹⁹ Bryce's *American Commonwealth* (edition of 1910), Vol. I, pp. 160–165.

¹⁰⁰ Ray's *An Introduction to Political Parties and Practical Politics*, pp. 402, 403.

¹⁰¹ Ray's *An Introduction to Political Parties and Practical Politics*, p. 443.

¹⁰² Reinsch's *American Legislatures and Legislative Methods*, p. 174.

¹⁰³ Governor Clarke recommended such a system in his message to the

Assembly in 1915, urging the adoption of such a rule and that such procedure in committee be made statutory.—*Senate Journal*, 1915, p. 42.

¹⁰⁴ Ashley's *American Federal State* (revised edition), p. 256.

¹⁰⁵ From an address of the director of the reference bureau before the section on bill-drafting of the American Political Science Association at Washington in 1915.

¹⁰⁶ French's *Sub-committees of Congress* in the *American Political Science Review*, Vol. IX, p. 68.

**SOME ABUSES CONNECTED WITH
STATUTE LAW-MAKING**

BY

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I

INTRODUCTION

THE chief function of the legislature is to enact laws for the public good — that is, for the welfare of the State as a whole rather than for the benefit of individuals, or localities, or organized groups. To accomplish the best results the legislature must command the esteem of the citizens of the State. It appears, however, that American State legislatures do not to-day possess that unre-served confidence of the people which they formerly enjoyed. Indeed, it is a common observation that their character and efficiency have greatly diminished. One writer goes so far as to say that “a session of the Legislature is looked upon as something in the nature of an unavoidable public calamity. Business becomes alarmed, industrial development and investment are checked, and there is a general apprehension that the results of the legislative session, instead of being beneficial, will be injurious to the public interests.”¹

While the popular distrust of the State legislature may be considerably overdrawn, it is a fact that the situation to-day is just the reverse of that which obtained when the State governments were reorganized after the Declaration of Independence. At that time there was a manifest distrust of executive power and a general feeling of confidence in legislative bodies. In fact, in the State Constitutions of the early period there was a tendency to enlarge the legislative power at the expense of the other departments of government. But since the

adoption of the Federal Constitution there has been a steady tendency to withdraw powers from the State legislatures and to restore them to the executive or the electorate. Although lack of confidence in State legislatures was of slow growth in the earlier years it has greatly increased in the last half century.

This loss of confidence is evidenced by numerous constitutional limitations and prohibitions on the legislative power and by a growing demand for direct legislation. It is shown not only by the attitude of the people, but by the action of the legislators themselves. In many States the legislature has indeed become an object of fear and a thing to be endured and reduced rather than the trusted instrument through which the will of the people is expressed.

This distrust of the legislatures is a serious matter. But in justice to the legislators it should be said that they are no more blameworthy than are the people: both are at fault to some extent. Moreover "it does not follow that the whole system should be condemned because many individual legislators have betrayed their trust; on the contrary, an impartial study and analysis of the causes of legislative inefficiency and corruption will show that they are due to defective methods of procedure and organization — to the autocratic and dangerous powers invested in speakers and committees — to unwise restrictions on legislative responsibility — to the action of Constitutional Conventions in hedging legislative power with too many limitations, lowering the standard of membership, and discouraging men of talent and public spirit from seeking legislative membership — to the opportunities which our legislative organization, rules, and methods of procedure furnish to machine politicians and political

bosses and selfish special interests to acquire control. It will be found that the legislatures have been more corrupt and more incompetent in exactly the same proportion that they have been increasingly deprived of power and their responsibility restricted."²

If it is true that American State legislatures have declined, the reasons for their decadence should be ascertained and made known. And it is altogether fitting that the more important of these reasons should be set forth in a volume on statute law-making; although all the causes of legislative inefficiency and decline can not be presented in this connection.

This paper on *Some Abuses Connected with Statute Law-making* is neither an exposure nor an apology. It seeks merely to point out some of the insinuating influences which affect legislative action, directly or indirectly, and which affect the attitude of the people toward the legislative body. Legislative action is attended by conditions and circumstances, obstacles and pitfalls, which tax the ingenuity of the best informed legislator if he seeks to uphold a high standard. It is a difficult task to prevent the general welfare of the State from being subordinated to the interests of individuals, or localities, or party organizations, and at the same time to secure legislation that is for the public good. The public has been inclined to disregard the obstacles to be overcome by legislators, while magnifying the mistakes made by them: it should hold itself more directly responsible for the acts of the legislature.

Inefficiency in legislative action is not always the result of dishonesty or corruption: it is frequently due to ignorance or to influences which are very difficult to trace and overcome. It is true that in popular discussions leg-

islative inefficiency is usually considered as resulting from improper inducements offered to legislators, or to the evasion of the spirit of the law, or to the improper use of money in campaigns, or to lobbying and the practices which are commonly characterized as "graft". Legislative bodies are particularly susceptible to the charge of corruption, because valuable benefits are frequently conferred by statute law. Legislative corruption will doubtless continue as long as there are men whose only guide is expediency and who are clever enough to escape being caught: it will certainly continue as long as the individual citizen remains indifferent and passive and refuses to make any exertion to improve the conditions which surround legislative action.

It is the purpose of this paper to call attention to some of the questionable influences, conditions, and practices which confront State legislators in the enactment of statute law. The various phases of the general subject will be presented in the following order: first, influences at work during the legislator's campaign for nomination and election; second, conditions in the organization of the houses of the legislature; third, legislative lobbies; fourth, politics and procedure; fifth, unwarranted expenditures of money; sixth, other objectionable practices influencing statute law-making; and seventh, a brief discussion of special legislation.

II

PRE-ELECTION INFLUENCES

It is as honorable and as necessary to serve the country in times of peace as in times of war. And to desire public office may be a worthy and patriotic ambition. Men have always sought power and influence and preferment, and it is proper that they should do so. But the methods used in acquiring public office and the manner in which the trust is administered should be carefully scrutinized; and men in public positions should be criticised or commended according to their just deserts. Men are not required, as a rule, to accept political leadership, but when they seek and accept the responsibility the public has the right to insist that they shall be both capable and honest.³

Theoretically State legislators are men who have been chosen, because of their reputation and ability, to represent the people of the several parts of the Commonwealth: men who are willing to make a sacrifice in order to serve the public and advance the general welfare. Theoretically their only obligations are to their constituents and to their own consciences. The citizens also are supposed to be awake to the needs of the State and to know what their representatives are doing; and they are supposed to give willingly as much of their time and energy and means as may be necessary to secure good government.

Unfortunately the actual situation is neither so simple nor so satisfactory. There is a tendency on the part of the people to disregard the duties of citizenship and to

devote all of their thought and energy to private affairs. The lack of concern for government and administration on the part of the people has encouraged the development of a class of professional politicians who have acquired a great deal of influence in the election of officers and in the administration of State government. Moreover, political parties have developed compact organizations; and this situation places a double obligation upon the man who would be a legislator: although a representative of all the people, he must in most cases attach himself to a political party and subject himself to the dictates of party organization. It is frequently a difficult matter to reconcile these obligations. The people want an honest and efficient government, but they do not always take the pains to secure it. Parties seek above all things to secure or retain control of the government.

The man who seeks a seat in the legislature is usually under obligation to a political party for his nomination and election — an obligation which is increased by the activity of the party organization and the indifference and apathy of the great mass of the electors. Moreover, the men who would be legislators too frequently seek the office for personal or party ends rather than for the furtherance of the general welfare of the State. But assuming that a candidate is seeking election to the State legislature because he is prompted by a worthy ambition and feels that he can be of service to the State, it is very difficult for him to secure an election and at the same time retain political independence. Candidates must define their policies and attitudes before election and make promises in regard to their conduct and activities in case they are elected. At the same time they are made to feel that they must satisfy the party organization; and some-

times they are even tempted to agree to represent and protect certain economic interests in order to secure election.

Preëlection promises to a constituency are proper: indeed, the people should require candidates not only to promise the faithful performance of duties to the best of their ability and in the interests of the public, but also to agree to support specific measures and policies and the people should demand the fulfillment of such promises and agreements. Nor is there anything wrong in loyalty to party so long as the party is really an organ of the people and not of an organization conducted for the benefit of a few private individuals or interests. It is, of course, difficult to determine just where the line should be drawn in the matter of preëlection promises, since it is not always possible to distinguish public from private interests. But an alert public will not permit a legislator to make many mistakes, nor will his own conscience, if kept awake, allow him to go far astray.

Aside from promises conditioned upon election to the legislature, campaigns for election are sometimes characterized by dishonest and unwholesome conduct known as "corrupt practices". These practices include bribery, undue influence, treating, illegal voting, and betting. Many voters fail to place a proper value upon their suffrage privilege, and some are even willing to sell it for a consideration. Employers sometimes exert undue influence upon their employees in the matter of how they shall vote. Treating has been widely used as a means of increasing enthusiasm for a candidate. And in some States there has been illegal voting; that is, persons have voted who were not entitled to vote, or voters have voted more than once at the same election. Betting on the out-

come of the election is also used as a means of concealing bribery.

During a campaign for election the opportunities for indulgence in corrupt practices are many. For example, candidates may be called upon to supply cigars, liquors, or cab hire for the purpose of influencing individual voters. Where powerful political machines have flourished the other practices enumerated have been more frequently indulged in, ballot boxes have been stuffed, and voters have been intimidated. Powerful interests in some States have, moreover, placed candidates for the legislature under obligation by making large and timely campaign contributions. Where legislators have been elected with the assistance of such practices their usefulness as independent representatives is greatly impaired, if not completely broken. That corrupt practices have been widely prevalent is evidenced by the fact that many of the States, including Iowa, have already enacted more or less comprehensive corrupt practices legislation.⁴

Preëlection influences, promises, and practices are subsequently reflected in the work of the legislators, determining to a large extent the character of the legislation enacted. If the electorate of the State has been awake to its responsibilities, has chosen able men to the legislature, and has demanded only that its representatives work for the common good of the whole Commonwealth there is little to be feared from questionable influences during the session of the legislature. If, on the other hand, the electorate is not awake to its responsibilities and legislators block their own freedom of action with promises and obligations to individuals, interests, or party bosses in order to secure election, then intelligent and wholesome work on the part of the legislature can not be expected.

III

INFLUENCES IN THE ORGANIZATION OF THE LEGISLATURE

It has been stated that the purpose of this paper is to point out some of the obstacles to straightforward and efficient action on the part of State legislators in the work of statute law-making. Some of the conditions which influence their action were mentioned in connection with preëlection activities.

In discussing some of the preëlection influences which operate to determine the character of legislation enacted by the American State legislature it was shown that upon the alertness of the electorate depends the type of men elected to the legislature. When the law-making body meets, however, its action is not so closely under the control of the electorate. As a matter of fact the legislators have shown themselves to be as nearly representative during the legislative session as they were during the preëlection campaign.

The path of the legislator is not a smooth one. Election to office does not remove him from the zone of undesirable influences which tempt him to make bargains and compromises. Before any legislation can be enacted the houses of the legislature must be organized. This is serious business, since under the system of organization which has been in vogue in State legislatures the speaker of the House and the president of the Senate, together with the chairmen of the important committees, are in a position to control to a great extent the action of the leg-

islature itself. It is to be expected, therefore, that in the organization of the houses of the General Assembly the influence of individual interests, of the party organizations, and of outside combinations will be at work.

In States where the party organizations are under the control of political machines, men in sympathy with the organized machine will be chosen to fill the important positions in the legislature. Under such conditions legislation is controlled by the machine. In States where the influence of machine politics is not State-wide, the organization of the houses will be strictly along party lines, with more freedom of action among the dominant party members. Many compromises and "understandings", not to say "deals", may, however, have to be "framed up" in order to maintain harmony in the party. Outside influences are sometimes powerful enough to dictate the selection of the officers and committee chairmen of the legislature. Indeed, the building and loan associations' lobby claimed the credit for securing the election of a speaker favorable to a certain type of legislation in the Iowa House of Representatives in 1896. It appears, however, that the claim in this instance was made to enhance the reputation of the lobby in the opinion of its employers and that there was little foundation upon which to base the truth of the statement.⁵

When the two parties are of relatively equal strength compromises and bargains are common between the leaders of the two parties, each party endeavoring to secure as many offices as possible. Under such conditions each party will be closely scrutinized by its opponent. If the members of the different parties are loyal, an equal division of strength is one of the strongest safeguards against perverted action on the part of the legislature.

But deadlocks, which waste much valuable time and are of great expense to the State, frequently result from this situation. For example, the Iowa House of Representatives in 1890 consumed nearly five weeks in effecting an organization. A compromise was finally arranged according to which the "spoils" were divided about equally between the two parties.

In their zeal to secure favorable committee appointments individual legislators sometimes barter away their freedom and usefulness. When this is done the legislator, discovering sooner or later that he is merely the tool of the appointing power, frequently resigns himself to his fate and makes as much as possible for himself out of the situation. Procedure as a means of promoting undesirable influences in the legislature can not be considered in this connection, but it is in point to remind the reader that to a very considerable extent the speaker and committee chairmen control the action of the House and that the president and committee chairmen control the action of the Senate. Thus upon the organization of the houses of the legislature depends the trend and character of legislation.

A full discussion of the influences at work and of the possibilities for perverted action before the individual legislators are really in a position to legislate would require more space than can be devoted to this phase of the subject in this connection. In the foregoing pages it has been the purpose merely to indicate that in securing the nomination for the office of legislator a man is sometimes confronted with opportunities and temptations to further his own interests, perhaps both politically and financially, at the expense of the State, and that during the campaign for election other influences are brought to bear which if

yielded to would greatly impair his usefulness in the legislature. In his desire to be elected a candidate may be tempted to tolerate practices which in private life he would have despised. A campaign contribution at a critical time may tie his hands for all of his legislative career. Moreover, after the election and before the work of legislation begins another test awaits the legislator in the organization of the houses of the legislature for the business of law-making.

Furthermore, after the legislature is organized many influences are brought to bear upon the legislators, both individually and collectively, which encourage them to wink at certain forms of dishonesty on a larger or smaller scale. The conditions surrounding the law-makers seem frequently to develop a tendency to condone or indulge in actions which are not for the best interest of the State. Men are sometimes influenced to do things as legislators which they would not for a moment think of doing as private individuals. Some of these influences and conditions which surround members of the legislature and which affect statute law-making will be considered in the pages that follow. (For a full discussion of the organization of the General Assembly see Mr. Briggs's paper on the *History and Organization of the Legislature in Iowa* in this volume, pp. 78-95.)

IV

LEGISLATIVE LOBBYING

THE word "lobby" when first used in connection with legislation meant the passages and ante-rooms surrounding a legislative chamber: it has come to mean or to be applied to the persons who frequent such places for the purpose of influencing the members of a legislative body either to oppose or to support certain measures. The men and women participating in this kind of work are called "lobbyists" and their activity is known as "lobbying". These words do not necessarily suggest the wrongful use of money, nor do they always imply improper motive or conduct. Questionable action of any kind is often wholly absent where the lobby is the most numerous, the most persistent, and the most successful. The lobbyist may seek to have a measure enacted into law for the benefit of particular interests, or he may be laboring for the public interest. He may exert his influence fairly and openly or he may seek to influence the legislator through the use of improper methods.⁶

Lobbying is but a logical outgrowth of existing conditions, where the legislative body has broad powers, the exercise of which may affect the interests and fortunes of individuals or organizations of individuals. For example, there may be introduced in the State legislature bills that, if passed, would affect the powers of municipalities, bills that would affect public utilities, or bills that would affect the manufacture and sale of certain commodities. When such bills are up for discussion it is natural that

the advocates and opponents of the measures should seek to impress their views upon the members of the legislature.

It is not always convenient for persons who would be affected by proposed legislation to present in person their views, arguments, and information to the legislators or committees. And so they employ attorneys to appear before committees and present arguments — which is a recognized right — or they may employ persons or lobbyists to convince individual legislators of the merits of or objections to a measure. In the latter case men of legislative experience are usually chosen — sometimes ex-members of the legislature who are familiar with legislative methods and practices.

There are many ways in which the lobbyist may endeavor to influence the legislator: it may be “by casual interviews, by informal conversation, by formal presentation of facts and arguments, by printed appeals in pamphlet form, by newspaper communications and leading articles, by personal introductions from or through men of supposed influence, by dinners, receptions and other entertainments, by the arts of social life, and the charms of feminine attraction”.⁷ Lobbying, it is evident, may be of great educative value to the legislators, for it may influence them to inform themselves more fully in regard to the merits and defects of the measures in which the lobbyists are interested. “What the legislator most needs is light upon every subject that can come before him; and whatever contributes to his knowledge of the numerous and complicated subjects with which he has to deal, and of which he must often be profoundly ignorant, is of value. The only danger to the legislator lies in hearing only *ex parte* evidence, or in giving credence to

the too zealous representations of interested parties, while neglecting to inform himself of the facts upon the other side.”⁸

There seems to be little occasion for doubting that the American State legislatures are made up, for the most part, of representative men who are honest in a desire to serve their constituents efficiently and who wish to improve the general conditions in the Commonwealth. In order that the legislators may serve the State efficiently and fairly the people of the State must place at their disposal as good information as the corporations and other special interests provide through their lobbies. Legislative committees are similar to courts in that they usually hear only what is brought before them. The interests are represented before legislative committees by experts with well selected information and abundant means at their disposal while the public is only too often not represented at all.

THE LEGITIMATE LOBBY

There are two types of lobby: the one may be designated as the “legitimate lobby” and the other as the “illegitimate lobby”. The legitimate lobbies “seek to organize a public opinion favorable to their measures by the industrious collection and publication of facts, the distribution of documents, and the taking of testimony before committees.”⁹ They are made up of honorable men who seek to influence legislation through open and fair methods. The right of petition and the privilege of presenting a case before legislative committees can not be denied, and reputable men in all walks of life frequently attempt to influence legislation in which they are interested only as public-spirited citizens.

Indeed, in some of the States there are organized people's lobbies. For example, the Massachusetts Civic League, the Chicago Legislative Voters' League, and the Citizens' Union of New York City have conducted very active lobbies in the interest of the public. Efforts are made by them to enlighten the public in the matter of legislative procedure and to bring public opinion to bear upon legislative bodies. Commendable work has also been done in collecting information and in presenting the people's side of the argument when committees are considering measures advocated by the powerful interests. People's lobbies have done much in a few States to defeat pernicious legislation and to prevent the reelection of undesirable members, as well as to secure the enactment of desirable legislation.¹⁰ Only a beginning has been made in this direction, but the value of the legitimate lobby has been demonstrated.

THE ILLEGITIMATE LOBBY

The illegitimate lobby consists of men or women "who are ever ready to trade upon the necessities of claimants, or the fears and hopes of the ignorant, to barter a pretended control of votes for money, and to charge a high price for influence which they do not possess."¹¹ It is made up largely of shrewd and clever men and women who have a natural tact for influencing people. They have represented for the most part the corporate and special interests. Paid attorneys of corporations, shrewd ex-members of the legislature who know how bills are managed, and skillful, unscrupulous men, who have developed from hangers-on about the legislative halls into adept tools, make up this group of lobbyists. Moreover, there may be some lobbyists of this class among the mem-

bers of the legislature itself — men who seek to have laws enacted or to prevent others from being enacted for their own individual benefit or for the benefit of interests which they represent.

A sinister part in American politics has been played by the illegitimate lobby. "Though lobbying is perfectly legitimate in theory, yet the secrecy and want of personal responsibility, the confusion and want of system in committees, make it rapidly degenerate into a process of intrigue, and fall into the hands of the worst men. It is so disagreeable and humiliating that all men shrink from it, unless those who are stimulated by direct personal interest; and these soon throw away all scruples."¹²

The illegitimate lobby grew up in this country along with the great inter-State industries. The rapid development of the great railroad systems of the country depended to a large extent upon the granting of privileges and immunities by the States in which the business was conducted. Desirous of transportation facilities the people approved of the practice of granting special privileges to the railroads. The railroad companies developed, on their part, a group of men skilled in securing favors from legislative bodies. Having secured all the privileges they desired they hired out their lobbies to other great interests, such as the public service corporations. Thus with the growth of powerful business organizations the lobby became a valuable tool for securing desired and favorable privileges. In fact, it has come to be employed, to a greater or less extent, in practically all legislative bodies in the country whether Federal, State, or municipal.¹³

The illegitimate lobby has been able to maintain itself

despite public opinion and the opposition of individual legislators: it has been able to thrive largely on account of the methods and procedure employed in the State legislatures. In the first place, it is impossible for any one individual legislator to keep himself informed on all the business that comes before the legislative body: the number and variety of matters considered by that body is too great to be successfully comprehended by all of the members. The number of bills introduced is so large and the session of the legislature is so short that a member can not learn the merits and defects of all of the proposed laws. To facilitate the business of legislation the committee system has developed, which while expediting business also presents opportunities for abuse. The committee system places a few persons in strategic positions with respect to legislation, and it is around these men that the lobby revolves.¹⁴

The illegitimate lobby accomplishes its purposes through a variety of methods. In earlier days it worked in a haphazard manner, frequently achieving its object through direct and open bribery. Indeed, the railroad lobbies were in some States given desks on the floor of the legislative chambers where they carried on their business quite openly. Direct bribery has perhaps not been used so much in recent years; but lobbyists have discovered new methods of placing legislators under obligation. It may be through the transfer of money in a friendly game of poker; through "tips" in regard to the purchase of stock or other property; through rebates on transportation charges; through the employment of the relatives of the legislator; or through the "good-fellow stunt".¹⁵ Whatever the methods used, the illegitimate lobby has intrenched itself firmly in many legislative bodies.

The demoralizing effect of the illegitimate lobby has resulted, however, in a widespread demand for its regulation or suppression. Thus, the Federal government prohibits members of Congress from receiving compensation for services before a department; and the Supreme Court has held that a hired agent using secret means or exercising sinister or personal influence upon legislators is guilty of an illegal practice.¹⁶ By eleven of the Commonwealths lobbying has been made a crime by statute law. In three States the receiving of money for lobby services constitutes a felony; while in two States it is a felony to pay money for lobby services. In about fifteen States lobbyists are excluded from the legislative chambers during sessions of the legislature.¹⁷

LOBBYING IN IOWA

While it would be manifestly impossible to determine how much lobbying there has been in Iowa, it is a matter of common knowledge that there has been legitimate lobbying during every session of the legislature: but the extent of the operations of the illegitimate lobby must remain largely a matter of speculation. An examination of newspaper files reveals numerous charges and insinuations, and doubtless men who have served the State as legislators could cite many instances of the activity of the illegitimate lobby; but the writer has restricted his search for illustrations of the lobby in Iowa almost entirely to the journals of the General Assemblies.

One of the earliest instances of illegitimate lobbying in Iowa occurred before the Iowa country was separated from the original Territory of Wisconsin. A member of the House of Representatives from the county of Dubuque was bribed to exert his influence to secure the pas-

sage of an act granting a ferry charter to a certain individual.¹⁸ During the session of the Legislative Assembly of the Territory of Iowa in 1842-1843 certain persons interested in the Miners' Bank of Dubuque maintained a lobby at the Territorial capitol at Iowa City to prevent the legislature from repealing the charter of the bank. The methods used by the lobby in this instance were rather crude, and it was proved that offers of pecuniary and political advantage had been made to certain legislators for their influence in preventing the repeal of the bank charter. Strangely enough, the majority report of the committee appointed to investigate the situation censored the publishers of the newspaper which had published the charges that attempts were being made to bribe members, although the charges so made caused the investigation.¹⁹

When the First General Assembly of Iowa convened in 1846 the Whigs had a majority in the House, while the Democrats controlled the Senate. In the attempt to elect Senators to represent the new State in Congress each party sought to secure the election of men of its own political faith and a deadlock ensued. The political managers of the Democratic party were indiscreet enough to attempt to bribe a Whig member of the House. The attempt was exposed; but the deadlock could not be broken, and so Iowa was left for two years without any representatives in the United States Senate.²⁰ That charges of bribery and corruption were not exceptional seems to be indicated in the attempt to change a special committee on bribery and corruption into a regular standing committee.²¹

Again, when it was determined to move the State capital from Iowa City to a more central point in the State

several different localities were suggested, and the fight which finally resulted in securing its location at Des Moines was bitter. It appears that citizens of Des Moines maintained a lobby at Iowa City during a large portion of the session of the Fifth General Assembly, and the charge was openly made that the location had been secured through fraud and bribery. General James A. Williamson of Des Moines, one of the men prominent in securing the necessary legislation stated before the investigating committee that he had used "all lawful and legal means to get it, including Chesapeake and Sardinian appliances, and any quantity of whiskey."²² It appears, moreover, that four of the five commissioners appointed by the Governor to select the site of the capitol at Des Moines permitted their private interests to dictate the final location on the east side of the river.²³

In 1864 the House of Representatives granted the use of its hall to lobby members on two successive Saturday nights.²⁴ During the same session the following resolution was offered:

Whereas, It has become the practice of members of the House to charge those who disagree with them upon different questions and politics of being employed by the Des Moines River Navigation or Railroad Companies, or some other man; and

Whereas, We deem the effect of such excited discussion disreputable to the character of the General Assembly or members; therefore be it

Resolved, That the practice indulged by members of charging others with any such corruption without a view of bringing them before an investigating committee, be and the same is hereby forbidden.²⁵

The resolution was tabled, but its presentation indicates that there were lobbies at work in 1864 and that

their work was under suspicion. In 1868 a resolution to limit the length of speeches was amended to instruct committees to proceed with their business without further interruption on the part of lobby members; but it failed of adoption.²⁶

In 1870 an investigating committee reported that a certain lobbyist — H. L. Henry, acting in the interest of General James A. Williamson of Des Moines — had offered one member of the House \$2000 if he and his colleagues would vote for the capitol bill — a bill to appropriate money for a new capitol building — and that the same lobbyist had inquired of another Representative if \$5000 would be any inducement for him to vote for the bill. At the time of the investigation General Williamson could not be found in the State.²⁷ A sarcastic resolution adopted by the Senate relative to providing relief for four destitute lobbyists indicates that lobbyists were busy during the session of the Twelfth General Assembly.²⁸ And in 1873 there were charges and counter-charges that prominent members of the legislature, United States Senators, and the Governor of the State had all listened to the railroad lobbyists and that some of them had accepted railroad money for their campaign expenses and were working to secure legislation favorable to the railroads.²⁹

A bill "defining corrupt solicitation and prescribing a penalty" was introduced in the Senate in 1878, but no action seems to have been taken thereon.³⁰ In 1888 at least two resolutions relative to restraining the lobby were introduced in the House. One of them stated that "Whereas, It has become evident that legislation is being retarded by the importunities of the agents and representatives of corporations", committees should be in-

structed not to invite such agents to appear before them unless they are in need of information not otherwise obtainable. Both resolutions were lost.³¹ The newspapers of the State frequently referred to the activity of the lobby during the session of the Twenty-second General Assembly; and *The Iowa State Press* for March 21, 1888, stated that the most conspicuous object at Des Moines was the railroad lobby which fought the maximum rate bill and the two-cent fare bill.

It appears that the school text-book publishers maintained the most active lobby during the session of the Twenty-third General Assembly. The House by a large majority passed a resolution to appoint a special committee to investigate the charges that members had sold their votes on the text-book bill, but for some reason the committee was never appointed.³² Charges of lobby influence were made in the Senate also, and twenty-two Senators had inserted in the journal an explanation of their votes on the text-book bill.³³ The methods pursued by the book publishers' lobby during this session were condemned in the columns of the newspapers of the State.³⁴

A resolution introduced in 1894 to exclude lobbyists from the floor of the House during the hours of its sessions, was tabled and never brought to a vote.³⁵ In 1897 documentary evidence was produced showing the expenditure of a so-called corruption fund connected with the building and loan associations legislation of 1896. In his confidential report the chairman of the lobby intimated that he had been influential in securing the election of the speaker of the House and in the selection of a committee favorable to building and loan associations.³⁶ The committee appointed to investigate the matter reported

that there had been a recognized demand for building and loan legislation and that the law would have been enacted had there been no lobby. The committee charged, moreover, that many lobbyists were extorting money from individuals and corporations affected by legislation through alleging that they could influence the action of the General Assembly in regard to certain measures. It charged that many lobbyists were mere traffickers in influence which they did not possess and it denounced in severe terms the methods of the illegitimate lobby.³⁷

In his inaugural address delivered on January 16, 1902, Governor Cummins used the following strong language in reference to lobbyists:

The professional lobbyist has, I regret to say, become one of the features of legislative assemblies; he has become a stench in the nostrils of a decent community; and he ought to be driven with the lash of scorn, pursued by the penalties of the law, from the presence of every official and from the precincts of every legislative body in the republic. Do not understand me to suggest that the halls of legislation should be inaccessible to either the individual or the corporation. The right of petition is as sacred as it is venerable; and through it the wants, objections, or complaints of all who are interested in public affairs should be made known with absolute freedom; not only so, but the right to a fair and impartial hearing before appropriate committees should be sedulously preserved. The lobbyist, however, who is for anything or against anything for hire, whose mission it is to promote one measure or defeat another, who haunts the chambers of legislation and taints its atmosphere with his corrupt designs, who sends for members for interviews in the cloak room, who carries a tally sheet and watches the roll call, who shadows the members at their homes and hotels, injecting at all hours and all places his poison into the public service, is a criminal whose approach is an insult, and to whom the doors of the capitol should never swing inward.³⁸

In 1904 the lobbyists were so numerous, so persistent, and so bothersome that the sergeant-at-arms of the Senate was instructed to keep all lobbyists off of the floor during the hours of session.³⁹ Again, in 1906 Governor Cummins addressed a communication to the Republican voters of the State in which he declared that the railroads were trying to control the State government, as well as their own business; that they were opposing the abolishment of free passes and were working for the defeat of the primary election bill. The General Assembly immediately passed a concurrent resolution calling upon the Governor to place before the legislature the information that he had in regard to the activity of the railroads in influencing legislation.⁴⁰ It was in reply to this request that the Governor said:

An answer to the question involves a description of the manner in which a railway lobby ordinarily does its work. The railway lobby, here and elsewhere, has been in operation so long that most men understand fairly well how it furthers or retards proposed legislation. It expends money — great sums of money — but it rarely bribes. It ingratiates itself into the confidence of men through the respectability, the capacity, and the diplomacy of its representatives. It surveys a situation, and with keen perception understands how to aid men in attaining an ambition or accomplishing a much desired and oftentimes worthy object. It appreciates the force of public sentiment, and knows how to substitute fictitious for real opinions. It effects combinations so that it becomes helpful in defeating or passing measures through legislative bodies. It incites activity among the constituents of a member to the end that their desires, being frequently and emphatically expressed, may be accepted as the public will. It manipulates business relations so that the hope of gain or fear of loss is made to play an important part in the pressure which the people bring to bear upon the public servants.⁴¹

The Governor then described the methods used by the railroad lobby in Washington. He emphasized the point that he did not condemn their appearance before committees to present information; but he did condemn the activity of lobbies in opposing the primary election bill, and he interpreted such activity to mean that the railroad companies had determined to dominate the public affairs of the State.⁴²

During the same session of the General Assembly a resolution was introduced to require all lobbyists to report their business to the Governor and leave the city within thirty hours after their arrival, but with permission to return and appear before any one committee once in the interest of their principal. Resident lobbyists could appear before a committee but once; otherwise they must remain away from the State House. The resolution was objected to, laid over under the rule, and was never called up.⁴³

Governor Cummins struck at illegitimate lobbying again in his message to the General Assembly in 1907.⁴⁴ And a bill was introduced in the House which proposed to prohibit lobbyists from attempting to influence legislators in any manner except by appearing before committees. The bill was referred to the committee on judiciary; but when it was reported favorably its author, having obtained unanimous consent, withdrew the bill from the further consideration of the House.⁴⁵

A bill defining lobbying, declaring the same to be against public policy, and fixing a penalty was again introduced in the House in 1911, but having been reported unfavorably never came up for a vote.⁴⁶ It appears that there were many active lobbies at work during the session of the Thirty-fifth General Assembly, the most no-

ticeable of which were the school text-book publishers' lobby, the bridge construction companies' lobby, the public utilities lobby, and the railroad lobby. One member in defending himself upon the floor of the House declared that he had been deceived by the "bridge gang", and another member declared that the public utilities' lobby was dictating to the House.⁴⁷ A bill to prohibit unauthorized persons from lobbying was introduced in the House, but later was reported unfavorably and indefinitely postponed.⁴⁸ But few references to lobbying appear in the journals of the Thirty-sixth General Assembly. A bill to regulate lobbying, require the registration of lobbyists, regulate their activity, and prohibit improper and corrupt lobbying was introduced in the House. This bill was at first indefinitely postponed, then reconsidered, and finally passed by the House only to die in the hands of the Senate sifting committee.⁴⁹

Thus it appears that there has been some illegitimate lobbying carried on throughout the legislative history of the State. There has been opposition, on the part of some of the members, to the improper methods used by such lobbies; and some sporadic attempts have been made to drive the illegitimate lobby from the legislature. No definite action has resulted from these attempts, however, except that lobbyists have been excluded, since 1906, from the floor of the houses by the rules of the legislature.

V

POLITICS AND PROCEDURE IN THE LEGISLATURE

THE procedure in State legislative bodies in connection with the enactment of statute law is discussed at length in another part of this volume. But it seems desirable in this connection to refer to some of the influences and actions which at times obtrude themselves into the rules of procedure and neutralize their effect. As a matter of fact rules of procedure are for the most part rules of convenience, and the observance of these rules is very largely dependent upon the will and purposes of the majority in the legislative body. The political organization in power in the State legislature, whether it be partisan or bi-partisan, can usually make the rules of procedure serve the purposes of the organization. Indeed, the form of organization of the legislative houses is of such a character that it readily lends itself to centralized control. The speaker of the House and the president of the Senate, together with the chairmen of the leading committees — who are the appointees of the speaker and the president — are in a position to control, to a large extent, the work of the legislature. They can defeat legislation when it is in the interest of the organization to do so, and they can in a large measure secure the legislation which they favor. (For a thorough discussion of legislative procedure see Mr. Patton's paper on the *Methods of Statute Law-making in Iowa* in this volume.)

POWER OF THE SPEAKER

In point of fact the speaker of the House is chosen in the majority party caucus, frequently before the legislature convenes, and the selection is as a rule later ratified by a vote of the whole House. Since the speaker wields such enormous power the organization is careful to select only tried men for this position. If there is a heated contest in the choice, pledges may be required and given, with the result that committees may be determined in advance and the course of legislation be predetermined.⁵⁰

The speaker has three functions to perform from which he derives great power. These functions consist of the power of recognition, the power of reference, and the power of appointment. Through his power of recognition — the power to assign the floor to a member — he can determine who shall be heard and who shall not be heard before the House. He may recognize whomsoever he chooses to see and in the order in which he pleases to see them. The speaker determines whether or not unanimous consent is to be given upon occasion: if objections are made the speaker may not hear them. As a matter of fact “unanimous consent is subject to the speaker’s acuteness of hearing. His hearing is sharpened or dulled according to the good standing of the objector or of the member pushing the bill. If one, not friendly to the House ‘organization,’ wants to have his bill considered over an objection, he must move to suspend the rules. The speaker may refuse to recognize him, or may put his motion and declare it carried or not carried as suits his and the ‘organization’s’ desires.”⁵¹

An examination of the journals of the Iowa legislature shows frequent evidences of speaker rule. For example, in the journal for one session, under the explanation of

votes, is to be found the charge that a certain bill was forced through the House without consideration and without having been printed so the members could examine it.⁵² In another session the objection was made that certain bills were never read, except by title, and that no opportunity was given to perfect and amend them.⁵³ Again, in 1890 certain members filed protests that their votes had been erroneously recorded, but no action was taken, although the correction of the records would have defeated the bill.⁵⁴ Another indication of the power of the speaker is shown in the action taken by the Thirty-sixth General Assembly. On the last day of the session the speaker was authorized to call up such bills as he pleased and no others could be considered without the unanimous consent of the House.⁵⁵

Through his power of reference — that is, the power to assign bills to the several committees for consideration — the speaker is able, through his selection of committees, to determine the fate of a bill. For example, if the speaker, or the organization which he represents, is in favor of or opposed to certain legislation the bills pertaining thereto will be referred to committees which will deal with them in accordance with the desire of the organization. Through his power of appointment — the power to designate the men who are to make up the different legislative committees — the speaker may become a veritable czar. He may select as chairmen of the important committees men upon whom he can depend absolutely, and the entire membership of the committees through which he expects to work may be carefully selected. In the Senate the Lieutenant Governor performs functions similar to those of the speaker of the House. The power wielded by these officers is so great that great pressure is

exerted by party organizations and outside interests to secure the selection of the "right" men for the offices.⁵⁸

THE COMMITTEE SYSTEM

Practically all legislative bodies are now divided into a number of standing or permanent committees, and select committees are appointed when occasion demands. This organization into committees is necessary for the efficient conduct of business. Practical politics has demanded, however, that these committees be numerous and that they be made up of a large body of members. The situation in Iowa will illustrate the development of this side of the committee system. There were fifteen standing committees in the House of Representatives of the First General Assembly of Iowa (1846-1847), each with a membership of from two to five. In 1915 there were in the House sixty standing committees, of which the more important had a membership of from twenty to forty-one members. A similar change has taken place in the Senate, where the number of standing committees has grown from sixteen to forty-four and the membership of the important committees has increased from five in the earlier period to from fifteen to twenty-two at the present time. (See Mr. Horack's paper on *The Committee System* in this volume, pp. 574-585.)

Large committees are sometimes favored by politicians because such committees require reorganization into sub-committees and may thus be controlled through a select ring. Under prevailing conditions it is impossible to learn what is actually done in the name of the committee or to determine what forces are working for measures that are being advanced or retarded. Bills referred to committees and to sub-committees are at the mercy of

the chairmen. If a chairman does not wish to allow his committee to act upon a measure he may refuse to call a meeting.

It has been intimated that committees are sometimes "fixed". On the other hand, it may be that the majority of the members of a committee are kept in the dark in regard to the action that is being taken, and that formal meetings are held for the sole purpose of allowing the chairman to get a vote on the measures for which he is working. The chairman's report is submitted as the majority report; but instances may be found in the journals of the Iowa legislature where minority committee reports are signed by a majority of the members of the committee.

Again, committees may be called at inconvenient times when a quorum can not be present; and a vote may be taken on a bill when its friends or opponents are absent. Committee members may not be notified of the time of meeting, and a small number of the committee may be made to constitute a quorum. The chairman may, if backed by an influential organization, declare measures passed by his committee and report on them, although they have actually never been considered by the committee. In the rush of business at the close of a session members frequently sign reports concerning which they are not informed, upon the strength of the chairman's statement that they are "all right". Moreover, committee chairmen have been known to carry committee reports around in their pockets until all chance of action upon them was passed.⁵⁷

It would be of little value to enumerate all of the questionable practices which have developed in connection with the workings of the committee system. Some State legislatures are practically free from committee perver-

sion, while others are burdened with it. Doubtless some abuses have crept into the workings of the committee system in Iowa, but such abuses seem to be comparatively few. The character of the complaints that have been made in this State may be indicated by a few illustrations.

The House journal of 1878 records that the committee chairmen had to be compelled to give notice when their respective committees were to meet.⁵⁸ A few years later five members of any standing committee of the Senate were declared to constitute a quorum, although each of the important committees had from ten to fifteen members.⁵⁹ In 1913 a resolution which condemned the secret practices of committees and proposed open sessions and the recording of votes in committees was introduced into the House. Although it proposed to give publicity to committee action the resolution was not popular in the House and no action was ever taken in regard to it.⁶⁰ At the same time the introduction of such a resolution is evidence of a feeling that the committees of the General Assembly of Iowa have not always been free from reproach. In 1915 Governor Clarke made the following observations in his message to the General Assembly:

A legislative committee has taken the place in the mind of many as being something more powerful than the body which creates it. This, of course, is absurd unless the body has surrendered its authority by rules. Primarily a committee cannot control its creator. The legislative body never loses control over a bill or one of its committees. It may by vote sustain or defeat a committee, it is true, but the supreme authority is still there. We hear of such things as a bill being 'lost in a committee' or 'smothered in a committee.' This need not be unless it is what is wanted by a majority of the house or senate. This all creates a

prejudice and distrust of the law-making body. The committee takes on something of secrecy and every member of it is lost as to publicity and responsibility because nobody knows who was there or what was done or how it was done or who did it. This should not be so. A committee should be required to keep a full and exact record of every meeting. It should show who was there. . . . It should show the vote of every member upon every question voted upon and this whole record should accompany every bill coming from a committee.⁶¹

That a great effort is sometimes required on the part of the House or Senate to get a committee to report a bill is illustrated by an incident recorded in the Senate journal for 1915. In a preamble of eight paragraphs to a resolution it is stated that a certain joint resolution had been referred to a committee, and that it had been regularly referred to a sub-committee. The sub-committee reported favorably upon the resolution to the whole committee, but the whole committee voted down the motion of the sub-committee that it be reported for passage. The whole committee refused, moreover, to report the resolution out either without recommendation or with the recommendation that it be indefinitely postponed. In short, the majority of the committee attempted to bottle up the resolution and prevent its consideration by the Senate. As a result of the resolution calling attention to the situation the committee was finally instructed to return the joint resolution to the Senate.⁶²

JOCKEYING AND WASTING TIME

A large amount of time is wasted by nearly every legislative body during the early part of its session. At first there is a period of jockeying for offices and for committee appointments during the organization of the houses ;

then there is a period for testing out the organization and preparing for work. In short, it seems to be impossible for the State legislature to get down to real work during the early part of the session: consequently the last few days are badly overcrowded. During the closing weeks of a session important action is taken every day, when but few of the members know what is actually taking place. An artificial "unanimous consent" is created by which all rules of procedure may be evaded. The reading of the journal is often dispensed with and the authoritative record of the proceedings of the legislative body may not be printed until several days have elapsed. The calendar is often disregarded, and individual members are unable to find out what is taking place.

An examination of the work of the General Assemblies of Iowa shows that it has been customary to pass more than two-thirds of all the laws enacted during the last ten days of the session. This crowding at the close of the session became so great that the practice of appointing a sifting committee a few days before adjournment has been established. To this sifting committee are usually referred all bills before the legislative houses, with the exception of appropriation bills and bills in charge of the committee on retrenchment and reform.

The speaker appoints the sifting committee in the House and the president appoints the sifting committee in the Senate. When these committees are appointed near the close of the session the speaker and president are so well acquainted with the members that they can appoint men to these committees who will if required carry out their wishes. The result is that the speaker of the House and the president of the Senate, together with the two sifting committees, form for all practicable pur-

poses the legislature. Thus it was charged in 1909 that Speaker Feely and his sifting committee in the House enabled a wet minority in the House to block all action on the part of a dry majority of the whole legislature.⁵³

The rush of business during the closing days of the legislative session permits bad bills to slip through — bills that would have no chance to pass if they were to be considered carefully. Moreover, this crowding increases the tendency on the part of the legislature to shift the responsibility for bad legislation upon the Governor and the courts. In this State for instance, nearly one-half of all the laws passed by the Thirty-third and Thirty-fourth General Assemblies were signed by Governor Carroll after the adjournment of the houses. The proportion of laws sent to the Governor for his signature after the adjournment of the legislature has not been so great for the last two sessions, but it is still large. Such shifting of responsibility can not but result in a decrease of public confidence in the legislative body.

LOG-ROLLING

Many bills are put through legislative bodies by resorting to the practice of "log-rolling" — that is, one legislator agreeing to help another member secure the passage of his bill in return for a similar favor. As with many other practices the object determines the character of the practice. Coöperation is necessary in every line of endeavor, and when a member of the State legislature with a good measure discusses it with his colleagues who also have good measures and they agree to support one another there is surely no objection to the agreement. All of the worth-while work of the world is accomplished through united effort. In legislation it is only when co-

operation is withheld under threat or is granted for support given against honest judgment that "log-rolling" should be condemned.

In Congress "log-rolling" is usually resorted to in securing appropriations: in State legislatures the practice is frequently abused in connection with the enactment of local and special laws and in securing or trying to secure favors for certain districts. For example, there was some agitation in Iowa in 1884 for the establishment of two or three State normal schools. When the General Assembly met there were about twenty bills introduced to establish such schools in various parts of the State and the sponsors for the bills worked to secure coöperation in the passage of their individual bills. Only too frequently in State legislatures the size of the appropriations is determined, not so much by the needs and merits of different institutions and projects as by the necessity of making the appropriations "go round" and of satisfying the different localities and interests.

RIPPER LEGISLATION

In States where the political situation is controlled by a boss or where the party organization is strong, a pernicious type of law-making commonly termed "ripper legislation" has developed. Ripper laws may assume different forms, but they usually aim to secure for the political machine powers which rightfully belong to others. Municipal government seems to be the favorite field for ripper legislation. A ripper act may reorganize city government in such a manner as to turn out the rightfully elected incumbents of office and put in a new set of officers selected by the machine. This was done in Pennsylvania in 1901 and 1902. It may deprive one official of an im-

portant function and vest it in an official controlled by the machine. The functions of one State board may be shifted to a different board or official. Ripper legislation may provide for the removal of political opponents, provide long terms of office for partisan favorites, amend municipal charters one way for political friends and another way for political opponents, without any regard for decency or right.⁶⁴ Very little of this kind of legislation is to be found in the history of the General Assembly of Iowa.

LEGISLATIVE BLACKMAIL OR STRIKE LEGISLATION

The public is inclined to deal leniently with the legislator who through ignorance and inefficiency becomes the tool of a political boss or corporate interest: even those who allow themselves to be bribed are usually pitied rather than condemned. But it appears that there are sometimes men in the legislature who are without principle and who invite bribery. The activity of such men takes the form of introducing "strike" or "regulator" bills—an activity which amounts to legislative blackmail.⁶⁵ Thus a bill hostile to some financial interest is introduced into the legislature for the purpose of extorting money or other personal advantage from the interest whose welfare demands that the bill be defeated. Among the standard "regulators" are bills to require useless but expensive improvements to be made by railroads, bills to hamper sleeping-car and express companies, and bills affecting insurance or public utility concerns. After introducing a strike bill the legislator indicates to a representative of the interest to be affected his willingness to have the bill dropped, for a consideration. This practice is more prevalent in some States than in others and it

appears never to have been used to any great extent in Iowa; but it seems to have been widely resorted to in Illinois.⁶⁶

The practice has been used, moreover, by the interests as an excuse for the corruption practiced on their part. "But to argue that the existence of these conditions forces the corporations, and especially the stronger interests, into legislative corruption is certainly not convincing. It is conceivable that a smaller corporation may be forced to buy immunity in individual cases, but the more powerful interests which exercise the real control must certainly know that money spent to avoid vicious legislation is worse than wasted, since the appetite grows by what it feeds on. From a study of the legislative action of the great industrial interests it is apparent that they often do not go into the legislatures primarily for the purpose of self-defense, but on account of a desire to gain undue privileges denied to others, and to resist legislation which the real interests of the public demand. Thus the insurance companies opposed legislation to compel them to put the entire contract into the policy, or forbidding them to allege that their paid employees are also the agents of the insured. The manner in which the transportation interests have resisted the enactment of laws demanded by public policy and by ordinary regard for human life, and have constantly pressed for special privileges and exemptions, is notorious. If their only purpose were self-defense, they would attempt to ally themselves with the honest legislators and keep them honest: that would be their best protection. But instead of this, it is the almost invariable practice of their representatives to associate with the corrupt elements and to use every device ingenuity can suggest to render honest men corrupt."⁶⁷

JOKERS

The practice of inserting "jokers" into bills is indulged in to some extent, but not widely by State legislatures. A "joker" consists of a word or a clause which when introduced into a proposed act takes away the apparent meaning of it: it emasculates the enactment or perverts its purpose. A joker is usually introduced in a harmless-appearing or an obscure amendment which subverts the whole purpose and character of the bill. In State legislatures the joker is usually resorted to only in those cases where powerful interests are represented in the legislature and legislation unfavorable to such interests is being enacted.⁶⁸

RIDERS

The power to veto specific items in congressional appropriation bills is not exercised by the President of the United States, nor can the Governors in a majority of the States veto such items in State appropriation bills. Bills must be accepted or rejected in whole, and the bad items must be accepted with the good. Extravagant appropriations for unworthy objects have resulted from this situation. Legislators have taken advantage of the limitations on the veto power by insisting upon amendments called "riders", which provide appropriations for unworthy purposes or secure legislation which could never be enacted if they stood on their own merits. Such riders are sometimes attached to the general appropriation bill. Thus since the bill must be approved in its entirety by the executive or else rejected in whole, unscrupulous politicians may cause undesirable legislation to be placed upon the statute books through the use of a rider.⁶⁹

In some States the use of the rider developed into a noticeable abuse. For example, it was said that in Oregon

every year, for a generation, the general appropriation bill had reached the Governor overburdened with a large quantity of extraneous details. Every legislator who had an axe to grind found his opportunity in connection with the appropriation bill. Governor Chamberlain in 1904 rebelled against this abuse and forced the legislature to eliminate all riders on the general appropriation bill by his threat to veto the whole bill should it be sent to him with the usual number of riders attached.⁷⁰

AMENDMENTS

It is of course essential that legislative bodies should have the power to amend any bill that comes up for consideration. At the same time, as with many other practices which are good when properly used, the power of amendment may be abused. Amendments are frequently employed for the purpose of defeating or emasculating legislation which is opposed by political organizations or special interests. Amendments may be made which divert the whole purpose of the bill and cause those who favored the measure originally to oppose it upon its final passage.

Innocent appearing amendments which impair the constitutionality of a measure may be added to a bill, or amendments which provide sections which are too stringent to be enforced may be attached, especially to bills designed to suppress crime. Again a bill may be referred to a committee hostile to its purpose and the committee may amend the bill either by substitution or by the addition of objectionable clauses, thereby causing the delay and in many cases the defeat of the measure. There may be introduced early in the session sham bills which can be used during the last busy days of the session as stocks

upon which to graft any desired legislation. This practice of amending a bill by striking out everything after the enacting clause and substituting a different measure should be prohibited because it frequently enables a few persons during the last rush hours to circumvent the will of the whole legislative body. Political bosses have in some instances prevented the passage of bills by preparing amendment after amendment to be proposed by their henchmen until the advocates of the measure despaired of securing action and gave up the fight.

VI

PERQUISITES, PRIVILEGES, AND PATRONAGE

LEGISLATORS should be provided with every facility that will help them to perform their work more efficiently; and they should have adequate means of obtaining information. They should have the necessary assistants to help them in their work; and they should have transportation and adequate salaries. (For a historical discussion of the compensation and perquisites of legislators in Iowa see Mr. Briggs's paper on the *History and Organization of the Legislature in Iowa* in this volume, pp. 18-22, 66-68.) But it goes without saying that unnecessary expenditures and extravagance should be avoided. Some of the different forms of petty graft that are sometimes indulged in by members of State legislatures will be briefly discussed in this connection.

PERQUISITES

Although the record of the General Assemblies of Iowa is comparatively clean — almost without any serious charges of graft and corruption — an examination of the legislative history shows that there has been some graft of a petty nature. For example, beginning with the First Legislative Assembly of the Territory and extending down to 1872 it was customary for the members in both houses of the legislature to vote themselves a number of newspapers — usually from five to thirty dailies, or their equivalent in weeklies, for each member — to be paid for by the State. The papers so received were then mailed

to constituents or residents of the various districts. The postage for the purpose of sending the papers out over the State was also supplied from the public treasury. Moreover, the officers and employees of the two houses were allowed the same privilege, although in some instances they were limited to a smaller number of papers. The importance of these items is suggested by the fact that the appropriation act of 1866 provided \$13,021.15 for postage and \$17,190.40 for newspapers; while at the following session \$16,267.94 was voted for postage and \$23,321.00 for newspapers.⁷¹ In 1868 postage to the amount of eight dollars per week was allowed to every member of the House of Representatives.⁷² Opposition to these expenditures developed in the legislature itself, and in 1872 a resolution to have the usual number of newspapers supplied to the members failed to carry in the House. The Senate retained its newspapers in 1872, but thereafter the practice fell into disuse and the postage privilege was abolished about the same time.⁷³

In addition to newspapers and postage the early legislators provided themselves and the officers and employees of the houses, at State expense, with various supplies such as stationery, gold pens, pocket knives, ink-wells, and erasers. Items such as the following appear in the appropriation acts previous to 1872: gold pens, \$231.65; knives and erasers, \$301.85.⁷⁴ Indeed, perquisites of this character were demanded by the legislators and any intimation that the granting of them was improper was resented. Court reports, public documents, codes, and session laws were also furnished to members, doorkeepers, messengers, and other employees, at State expense.

Occasionally a member would offer a sarcastic resolution in regard to this type of petty graft. For example,

in 1866, after the House had adopted a resolution providing each member with postage to the amount of five dollars per week, a second resolution was offered. It instructed the chief clerk to furnish each member and officer with a good knife at a cost not exceeding two dollars each. One member moved to amend the resolution by adding after the word "knife" the words "and a good shaving kit, comprising razor, soap, lather-box, and brush."⁷⁵ Again, in 1872 there was offered as a substitute for a resolution to furnish copies of the Supreme Court reports to the members of the legislature the following:

That the Secretary of State be requested to procure and deliver to the members of this General Assembly for their use, the following articles, viz.:

To each of the thirty-one lawyers of the General Assembly one copy of the Supreme Court reports, issued during his term of service.

To each of the ninety-five farmers, one shovel plow.

To each of the two nurserymen one grafting knife and one ball of grafting wax.

To each of the two stock dealers, one drover's whip.

To each of the two millers, one honest toll dish.

To each of the eight doctors, one scalpel.

To each of the six editors, one pair of scissors.

To each of the four lumber dealers, one elastic tape line.⁷⁶

Legislators should of course be supplied with necessary stationery and other materials needed in their work. They should have copies of the codes and the session laws — not only of Iowa but of the other States as well. In fact everything should be supplied which would tend to improve the work of the legislature. It should be noted in conclusion that the type of petty graft referred to

above has practically disappeared and that the legislators themselves brought about the discontinuance of the practices.

PRIVILEGES EXTENDED TO LEGISLATORS BY CORPORATIONS

The practice on the part of powerful corporations — railroad companies, telegraph, and express companies — of granting free passes and franking privileges to legislators and State officers was instituted in Iowa shortly after the first railroads were constructed in the State and was retained in spite of all opposition until 1906, when the system was abolished by law. During the early State period the practice was openly indulged in and with few objections. Indeed, in 1856 the Mississippi and Missouri, and the Chicago and Rock Island Railroad Companies provided a special Fourth of July excursion to Chicago for the members of the Iowa legislature.⁷⁷ In 1868 the Senate passed a resolution thanking the managers of the several railroads for free passes over their lines.⁷⁸ And in 1876 the manager of the Western Union Telegraph Company sent Governor Carpenter the following message: "Would you kindly notify the House and Senate for me that we will frank each individual member's own personal and social messages back and forth during their absence from home."⁷⁹

In the early seventies the attitude toward the railroads commenced to change. The roads had become arrogant and oppressive and a period of State regulation was instituted. Opposition was raised to the granting of further privileges to railroads and attention was drawn to the apparently intimate relations between railroad representatives and members of the State legislature. A bill to prohibit the granting of free passes to State legis-

lators was introduced in the Iowa House of Representatives in 1872, but being reported unfavorably it was indefinitely postponed. The opposition to railroads reached its highest point in Iowa about 1874, and the so-called granger law establishing freight and passenger rates was passed by the General Assembly in that year. It appears that the railroad companies withheld free passes from many of the members of the legislature when it became evident that regulatory legislation would be enacted; and a concurrent resolution condemning the free pass system and thanking the railroad officials for withholding passes from the members of the Fifteenth General Assembly was introduced in the Senate during the session in that year.⁸⁰

The system of free passes was continued in 1876, and bills, resolutions, and petitions were introduced in one or both houses of the legislature from time to time until the practice was finally prohibited. In 1882 a House resolution, which enumerated the undesirable features of free passes and requested the Board of Railway Commissioners to report to the House their views and opinions on the question, was adopted. The board reported at length on the various phases of the free pass system, but it made no definite recommendations.⁸¹ Bills to eliminate free passes usually failed to reach a vote.⁸² Governor Larrabee in 1888 opposed the system and recommended that it be destroyed root and branch, but his recommendations were not enacted into law. Although agitation for the elimination of the system of free passes continued, it was not until 1906 that a law to prohibit the practice was placed upon the statute books of the State.

There was less publicity in regard to the courtesies extended to the legislators by the express and telegraph

companies, but their services were extended quite as freely as were those of the railroads. Indeed, in some instances the companies sent on a legislator's frank messages or express that they would not send for an ordinary customer who was willing to pay the bill.

The origin of the free pass system probably antedated the coming of the railroads to Iowa, but it developed with them: there was always a more or less clearly defined opposition to the system. In fact, the system grew to such enormous proportions that it was said that in Iowa "it includes as the recipients of these favors nearly every class of public officials as well as their friends and dependents." Passes and franks place the recipient under obligation to the corporations which supply them. Moreover, so many members of the legislature made it their custom to go home over Sundays during the legislative sessions when the transportation cost them nothing that it was almost impossible to secure a quorum on Saturdays and Mondays. There flourished also the petty graft of receiving mileage of from ten to fifteen cents per mile (which has since been reduced to five cents) from the State and at the same time traveling on the free pass supplied by the railroad company. In 1886 a resolution to the effect that no mileage should be allowed to the members having free transportation was introduced in the House. The resolution was immediately tabled and an attempt was made to expunge from the record both the resolution and all the proceedings relative thereto.⁸³

Although the evil effects of free passes were probably over-emphasized, the people of the State were restless as long as the system endured. The greatest harm resulting from the system of free transportation and other privileges to public officials was doubtless in the impres-

sion made upon the mind of the public which feared and opposed any practice which placed those in charge of the government under obligations to powerful corporations.⁸⁴ That the system was tenaciously held to by the recipients of its favors is indicated by the fact that it took thirty-five years of agitation and opposition to uproot it in this State.

LEGISLATIVE JUNKETS

Until within very recent years it was customary for the members of the General Assembly of Iowa and their officers and employees to make visits in a body to various State institutions at State expense. Such junkets were of little value to the legislature, since only a part of one day could be spent at the institution visited where a program was usually arranged by the local authorities for the "entertainment" of the party. In some instances large committees of legislators were named to visit all of the State institutions — the legislature adjourning for lack of a quorum while the visits were being made. Such visits were frequently of great value to the State — especially where they supplied the lawmakers with information and a vision for the solution of the difficult problems of institutional control.

In 1866 the Board of Produce Exchange of Dubuque invited the General Assembly to attend a convention which was called to consider the subject of improving the rapids of the Mississippi River. The invitation was accepted and the legislature resolved to take a recess from the 10th to the 19th of the month in order to attend the convention — which was to hold one session on the 14th day of the month. An amendment was offered to the resolution to the effect that there should be no expense incurred to the State during the visit by the members and

officers of the General Assembly, either as per diem, or as traveling expenses, or for postage. This amendment was lost, as was a second amendment which provided that no member should be regarded as under any moral or pecuniary obligations to draw his per diem or postage during the recess.⁸⁵

Again in 1892 the members of the legislature took a trip which caused much comment. An excursion to Chicago was provided for the legislators in order that they might examine the newly installed interlocking switching devices in that city. The excursion was supposed to be a courtesy extended by the railroad companies, but some of the arrangements were not well planned — a mix-up occurred in the parcelling out of the tickets — and the charge was made that the whole affair was engineered by the Pullman Palace Car Company in order to influence members of the General Assembly in the disposal of several bills which were before the legislature and which were adverse to the Pullman interests in the State.⁸⁶

This practice of the General Assembly of taking excursions for various purposes to different parts of the State has fallen into disuse since 1904. It not only proved a source of great expense and loss of time, but it materially interfered with the business of legislation. Moreover, many people, including some of the legislators themselves, were of the opinion that it furnished occasion for systematic raids on the public treasury.

PATRONAGE

The "spoils system" is the term applied to the practice of using the patronage connected with elective offices as a reward for personal and party services. Whenever there are offices and positions to distribute the system

flourishes: appointments and removals are made for political reasons in a sort of rotation in order to give offices to as many partisans as possible. The system, which has fastened itself upon State governments, is responsible for much extravagance and inefficiency. Thus appointments made by the legislature are usually made for partisan purposes. There are clerkships of various sorts, sergeants-at-arms, doorkeepers, janitors, stenographers, librarians, postmasters, committee clerks, and messengers to be appointed at each session of the General Assembly. Moreover, in Iowa the legislature elects the State printer and the State binder.

Outside of the direct control of the legislature various State and Federal appointments are made to positions within the State. If there is a State political boss he may dictate such appointments. If there is no such boss the State legislators and Congressmen may endeavor to secure appointments which it is thought will result in their own political advancement. When the election of United States Senators was in the hands of the State legislature the legislators had an opportunity to demand a larger consideration in Federal appointments. Senator Allison was repeatedly charged with using the patronage of the State to secure his own reelection to the United States Senate.⁸⁷

But to return to strictly local patronage, it appears that the Governor of the State has numerous appointments to make, some of which must be confirmed by the State Senate. This situation furnishes a means, on the part of the Senate, of influencing the appointments made and of confirming or refusing to confirm a nomination for political reasons. For example, it was charged in 1915 that the failure of the Senate to confirm the ap-

pointment of Mr. Gardner Cowles, publisher of the *Register and Leader*, for a position on the State Board of Education was due to the fact that many members of the General Assembly resented the vigorous criticisms of the work of the Assembly which had appeared in the columns of his paper.

As a matter of fact, the spoils system has existed in Iowa since its organization as a separate Territory, the majority party controlling the selection of the officers and employees of the General Assembly and all the other appointments made by the legislature. It has also been responsible for superfluous officers and employees without duties. The minority party has opposed extravagance of every kind and has charged the majority party with corruption. When the minority party has succeeded the majority party in power they have merely exchanged attitudes.

The threat of withholding patronage has also been used as a whip in this State. For example, in 1843 it is recorded in the House journal that certain members of the legislature opposed the letting of a printing contract to the *Iowa Capitol Reporter* because the proprietors had made the charge, in the columns of their paper, that there were corrupt influences at work in the legislature which were favoring the Miners' Bank of Dubuque.⁸⁸

An examination of the journals of the houses of the Iowa legislature shows a gradual increase in the number of positions to be filled by the General Assembly during sessions. It is generally admitted that doorkeepers, janitors, messengers, and committee clerks have increased in number far beyond the need for them. Extravagance appears also in the granting of various kinds of supplies

to officers, employees, and representatives of the press. For instance, it is shown in the House journal for 1898 that it was the custom for press representatives to allow supplies generously voted to them by the legislature to accumulate until the close of the session and then draw the amount in money and not take the supplies for which they were supposed to have special use.⁸⁹

Again, officers and employees of the General Assembly have in many instances been allowed to draw more pay than they were entitled to. A regular standing committee acting as an investigating committee in 1892 reported that about twenty officers of the Senate had drawn from sixteen to forty dollars each more than they were entitled to. The report was passed on file and no further reference was made to the matter.⁹⁰ During the same session an attempt was made in the House to place all committee clerks on the pay roll from the day the committees were announced rather than for the actual time during which the clerks were employed.⁹¹

Extravagance in the matter of superfluous officers and employees of the General Assembly has prevailed down to the present time. Occasional attempts have been made in the General Assembly to abate this abuse but with little success. An investigating committee in 1897 recommended that the number of committee clerks, doorkeepers, and janitors be cut down, but the recommendation was disregarded by the legislature in 1898: indeed, additional employees were provided.⁹² The number of employees was increased in 1900, and two years later a bill to regulate the employment and assignment of committee clerks died in committee.⁹³ The following sarcastic amendment offered to a resolution to retain the services of several superfluous employees in

1907 indicates the attitude of some of the legislators: "and the chief clerk be instructed to place on the pay roll any others desiring employment."⁹⁴

The Thirty-fifth General Assembly authorized the joint committee on retrenchment and reform to employ expert accountants and efficiency engineers to study ways and means to promote the efficient and economical administration of the affairs of the various departments of the State government. In the consolidated report on the investigation of the existing procedure relative to the transaction of the business of the State these experts recommended the reorganization of the committee clerk system and a reduction in the number of other employees. They recommended that the number of committee clerks be reduced from ninety to forty-five; that the number of doorkeepers be reduced from twenty-three to six; and that the number of extra janitors and elevator tenders be reduced from twenty-four to six. This change alone would involve a saving of more than \$20,000 per session.⁹⁵

Instead of reorganizing their employees along the lines suggested by the report of the efficiency engineers, the Thirty-sixth General Assembly disregarded the recommendations altogether in its organization. Each Senator was allowed one clerk, and the number of committee clerks in the House was increased from forty to forty-two. Nor was there any noticeable reduction in the number of doorkeepers, janitors, messengers, and elevator tenders.

A part of Governor Clarke's message of January 12, 1915, to the General Assembly caused much comment among the legislators. The Governor stated that there was approximately five hundred dollars expended every

day during the legislative session for extra help and that a large amount of such expenditure was graft. He recalled some statements he had made to the Senate of the Thirty-third General Assembly as president of that body, in which he called attention to the large number of employees in the two houses who had no duties to perform.⁹⁶

A resolution was offered to expunge from the record of the Senate that portion of the Governor's message which intimated that there might be some graft in the employment of unnecessary help in the Senate, and a special investigating committee was appointed to examine into the foundations for the charge.⁹⁷ The committee addressed a communication to the Governor requesting him to explain his charges of graft more fully. In his reply the Governor referred to the statements he had made in his address and explained his reasons for making them. He then referred to the fact that the Senate had brought the employment of old soldiers into the discussion and said:

Since the soldier question has been brought in (not by me) I suggest that you investigate and report as to whether or not it is a fact that not only now but many times heretofore soldiers have been given places as doorkeepers who were owners of farms and well and comfortably fixed in life, worth many thousands of dollars, to the exclusion of needy comrades whose service to their country had been equal to theirs and kindly report if this was not for political reasons. And, if so, who was unkind to the needy old veteran and comrade?

I may ask you to investigate and report why there should be more doorkeepers than doors? Is there any reason why doorkeepers should be posted at the four doors in the galleries, it being well known that they are not used by the public except on special occasions—very many days of a session going by when not a half dozen persons appear in the galleries, and are not these

for admission to the public? Can any reason be given why a doorkeeper should be stationed at the doors on each side of the President's and Speaker's desk? Those doors are used only by members and employees. What do all these doorkeepers do? Can the committee report that they are needed for any proper purpose and are not the doors used exactly as they would be if they were not there?

Can any justification be given for placing four or five men in the cloak room of each house to hang up the coats and hats of members as they come in?

The mail is brought from the city to the Capitol. The State had a stalwart man regularly employed to distribute it among the departments. He could easily have carried the package for the members upstairs to the legislative post-office, and expected to do it. Can any just reason be given for employing another man to take that particular package up the elevator to the post-office?

Can any justifiable reason be given why two bill clerks should be employed simply to hand a senator a bill from a shelf or pigeon-hole when upon occasion he calls for one? And this is not frequent as all House and Senate Bills are placed in binding upon every Senator's desk. Now and then he wants an extra bill, perhaps, to send to a constituent. Are two men necessary to get it for him, or are two necessary to receive these bills in the bill room from the printer and put them in place by number?

The Senate has, I believe, seven pages and two telephone messengers. The telephone is in the cloak room just by the Senate. Here are nine—one to every six Senators. Are they really needed?

Is it not a fact that the law provides only for committee clerks? Is there any provision in the law for a clerk to each Senator? Has not the Senate provided each Senator with a clerk? This is simply an oversight of the law, which any one may make, and the following of a custom. There are forty-six committees and is it not a fact that at least twenty of them will not have occasion to meet, on an average, five times during the ses-

sion? Is it not a fact that the large number of committees were originally created to give place for as many clerks as possible? If the clerks employed were restricted to committee clerks and committee work, as the law provides, would not twenty-five in place of fifty be all that could possibly be given work? If there were a clerk to each of the forty-six committees, to do committee work, is it not apparent that at least twenty or more of them would be idle three-fourths of the time or more? Is it not a fact that many more than half of the clerks have no employment more than half the time even when the Senate is not in session? Is it not the experience of senators that many of the clerks are often absent from the Capitol because they are not needed? On investigation you may not be able to answer these and other questions directly, but do you not find that they state substantially the facts? Are not doorkeepers, clerks, janitors and even pages given places for political reasons?

After your investigation will you kindly report whether you would organize your own business on any such lines or if the Senate were a business corporation would you stand for an organization along such lines?

In view of your investigation can you now say in view of the time of the preparation and delivery of the message that I said anything on this subject that was not in accord with the truth? If these things are true does it not tend to bring all the departments of government into disrespect in the minds of the people and ought not the legislative — the greatest of them all and the one having authority over all — to adopt such a course as will place it above criticism and give Iowa the distinction of being perhaps the first American state to do so.⁹⁸

The Governor's reply to the Senate committee indicates the situation as it appeared to an observing man who had first-hand knowledge of existing conditions.

The committee reported to the Senate that it had been able to find nothing that would reflect upon the

integrity of the Senate nor any evidence that any member of the Senate had personally profited from the organization or conduct of the affairs of the Senate. It recommended the elimination of several positions and called attention to the fact that each Senator had a committee clerk and that such clerks were used almost without exception to assist the Senators in their private and business correspondence. The committee recommended, moreover, that the committee system be reorganized by reducing the number of members on each committee — which would also bring about a decrease in the number of necessary committee clerks.⁹⁹ (See also Mr. Horack's paper on *The Committee System* in this volume, Ch. VII.)

The most lucrative positions within the patronage of the General Assembly of Iowa are the offices of State printer and State binder. These offices are highly prized and are usually filled by men who are selected on the basis of political considerations. These offices, moreover, seem to have been continually under the suspicion of the public. Charges of corruption and graft have been made in connection with the administration of these offices more or less regularly for a period of sixty years.

The office of State printer was established in 1848, and that of State binder in 1855.¹⁰⁰ As early as 1857 an attempt was made to have both of these offices abolished and to have the State printing and binding done by contract with the lowest responsible bidder.¹⁰¹ In 1860 a special committee of investigation reported that abuses existed and that the State had been overcharged for the work done. At the same session bids accompanied by sureties were received which proposed to do the State printing at forty percent below the prices then being paid. Some slight changes were made in the law, but

the bids for the work were disregarded and the offices continued.¹⁰²

The agitation to abolish the offices was almost continuous and bills to accomplish this purpose were introduced at almost every session of the General Assembly.¹⁰³ The law was revised to some extent in 1873, and in 1874 a bill to abolish the offices actually passed the House, but was lost in the Senate.¹⁰⁴ It has been suggested that the House and Senate have taken turns in defeating bills seeking to abolish these positions. During the debate in 1874 in regard to letting the work by contract the General Assembly received a communication from a reputable firm which proposed to do all the State printing and binding at a reduction of at least twenty percent from the prices then existing by law.¹⁰⁵

Bills to provide for having the State printing and binding done by contract continued to be introduced.¹⁰⁶ In 1888 Governor Larrabee called attention to the rapidly increasing cost of printing and binding, giving some comparative figures and recommending action on the part of the General Assembly. Bills, resolutions, and petitions favoring the abolishment of the offices and letting the work by contract were introduced in the legislature, but they failed to have much effect. The price schedules were changed to some extent, but the offices were retained.¹⁰⁷ Governor Boies recommended an investigation in 1894. He showed that the cost of the State printing alone for the biennial period had been nearly sixty thousand dollars, and he stated that he was informed upon reliable authority that the work could have been done by contract for one-fourth less than had been paid.¹⁰⁸ The Governor's recommendation did not result in any change.

The press of the State made so many charges of abuse

in 1897 that the question could not be ignored by the General Assembly. Accordingly, a special committee of investigation was appointed in the House. The committee worked for some time, but the members could not agree among themselves and two reports were submitted. The majority report, going into details, showed that the State had been paying exorbitant prices for both printing and binding. For example, it was stated that the prices charged for both composition and press work on various kinds of blanks ranged all the way from two to twenty times as much as expert printers had testified that the work could be done for in open competition. It charged, moreover, that in more than a hundred instances the amounts allowed were unwarranted by law and should not have been paid. For the composition and typesetting on blanks the committee reported that the State was paying prices varying from twenty to fifty dollars in many cases where two dollars and a half would be a reasonable compensation. In the matter of furnishing paper the report stated that there was absolutely no check upon the State printer: he got whatever he called for, with no indication whatever of the purpose for which the supplies taken were to be used.

The committee secured data with regard to the manner in which the public printing and binding was done in other States, as well as some prices. It found that at that time (1897) two States owned their own printing offices and controlled the work directly; seven States, including Iowa, had a State printer with fees fixed by law; and thirty-six States let their work by contract to the lowest responsible bidder.

The minority report attacked the methods pursued by the majority of the committee and charged unfairness on

their part. In short, the minority did all they could to destroy confidence in the majority report; and they succeeded in preventing any change being made in the system, although some alterations were made in the law regulating the offices and the fees to be paid.¹⁰⁹

The rates paid by the State for its printing and binding were brought to the notice of the General Assembly again in 1900. It appears that the State Board of Control had been letting the printing and binding needed in connection with its activities, by contract under competition. A comparison between the prices paid under this system and that of the State was all in favor of the competitive system. Indeed, in those instances where the State printer had bid on the jobs for the Board his bid had been almost twice that of the next highest bid. For example, some of the bids for press work and composition on a certain job of blanks — the State to furnish the paper — were as follows: the State printer bid \$137.60; the next highest bid was \$55.00; and the lowest bid for the same work was \$21.00.¹¹⁰

The prices paid for blank-books became notorious. It was alleged that five hundred dollars each had been paid for certain blank-books which could be reproduced at a profit for fifteen dollars. A concurrent resolution to preserve a certain blank-book as a valuable curio, introduced in the House, reads in part as follows: "the extra blank book which was printed for the use of the state and which has become famed and notorious by reason of the amount charged for the printing of the same" should be preserved with the following inscription: "The book in this case is one of two books, ordered by the treasurer of state for use in his office, from the State printer, whose bill for printing the same was five hundred dollars

(\$500). The Twenty-eighth General Assembly, believing this to be the most valuable book of its kind ever owned or ever to be owned by the state, ordered its deposit in this case in the historical building, that it might ever be preserved as a fitting climax of the printer's art, at the close of the nineteenth century."¹¹¹

As usual the bills to abolish the offices of State printer and State binder and to have the State printing and binding done by contract in open competition failed to pass.¹¹² Similar bills were introduced in 1907 and again in 1911. It appears that Governor Carroll recommended a change in the system in his message to the General Assembly in 1911.¹¹³ Bills to abolish the offices were introduced in the last session of the General Assembly, and the efficiency engineers employed by the committee on retrenchment and reform recommended that the system be changed.¹¹⁴

VII

SPECIAL LEGISLATION

PRIOR to the middle of the nineteenth century legislatures in the several States enacted public and general, special, and local laws without discrimination. A large volume of local and special legislation was enacted in reference to matters that could have been better provided for by general laws. Public interests were frequently sacrificed to private gain. Localities were interfered with; and in some instances the processes of lawmaking were thrown into confusion. The result was a reaction against local and special legislation. One State after another changed its constitution in order to check the abuses of unregulated legislative action, until to-day the fundamental law of practically every State in the Union contains a specific enumeration of subjects upon which local or special legislation is prohibited: in some States the list includes as many as thirty subjects.

In regard to the difference between general and special legislation, it may be said that a general law is a measure that affects the welfare of the State as a unit: it is an answer to a general public need. A general law is one which applies equally to and operates uniformly upon all persons subject to the authority of the State, or upon any class of persons, places, or things that require, because of some essential characteristic, legislation peculiar thereto. A special law, on the other hand, is one which operates upon particular persons and private concerns. It applies only to a group of persons or things which

really do not form a separate or distinct class as regards the subject-matter of the legislation in question. A special law relates either to particular persons, places, or things which though not particularized are separated by some method of selection from the whole class to which the law might, but for such limitation, be applicable. Such a statute is in its nature an exception to the general rule of law; and from this viewpoint it is a law only in that its passage has conformed to the usages and formulas of the legislature. In substance, a special act is a grant of a privilege rather than a law.¹¹⁵

Iowa was one of the first States to restrict special legislation by constitutional provisions; and although these restrictions have for the most part done away with special and local legislation along the line of the specific prohibitions there has continued to be enacted in this State a large number of temporary, local, and special acts which do not come under the provisions of the constitutional prohibitions. For want of space a complete discussion of the situation relative to special legislation in Iowa is impossible in this connection; but a brief statement of some of the most objectionable features of special legislation in general will perhaps suggest the reasons for the constitutional restrictions.

It has been said of local and special laws "that they consume time, they sap energy, they discourage talent, they conceal iniquities, they make law a by-word, they transform legislatures into tribunals of adjudication and courts into organs of legislation. . . . Our unfortunate habit of carrying all our local and private ailments to the state capitol, to have the virtuous adhesive of a special law applied, has transformed our law-making bodies into quack commissions with mongrel duties."¹¹⁶

The above arraignment is probably too severe as applied to most of the States, but as regards the situation in some Commonwealths it is not overdrawn. Special and local legislation does consume the time of the legislature, but this is not a serious evil. If the legislature would devote more time to the consideration of such legislation and not pass a special or local act until the reasons why it should be passed were produced, the demand for special legislation would decrease. But local and special bills are usually referred to committees and receive little if any consideration before the house. Furthermore, local and special bills frequently go to committees whose members are favorable to such bills; and when the committee reports such bills favorably they are likely to pass the house without debate: the ease with which special legislation is passed increases the demand for it.

A more serious objection to local and special legislation, and especially to corporate legislation, is that it produces a mass of slightly different provisions where simplicity and uniformity are desirable. The volume of law is increased. Numerous concerns hold charters with slightly diverse provisions. This diversity increases the difficulty of regulation and makes uncertain the outcome of suits, because each individual charter differs slightly from all others. The State of Iowa has fortunately escaped most of the evils of special charters since the granting of such charters was prohibited by the first Constitution. In Maryland, however, powerful interests have secured exceptional privileges and exemptions. Powerful combinations have been able to secure special charters, while the less favored enterprises have been obliged to incorporate under the general incorporation law.

It appears that the larger number of special charters

are granted to banking companies and public service corporations and that in many instances they are secured only to be delivered to another party. Politicians sometimes secure such special charters for the purpose of disposing of them to interests who will be benefitted by their possession or to rivals who are persuaded to buy them off in self-protection. In 1900 the Maryland legislature passed fifty-eight special incorporation acts and eighty-six acts amending private charters.¹¹⁷ Such abuse of legislative authority is unnecessary. The best manner of providing for the needs of private corporations is well understood, and general laws permitting organization by voluntary association are on the statute books of almost every State. Legislatures should firmly refuse to consider an exception.

Local and special legislation encourages log-rolling and furnishes a means of holding up the work of the legislature. Local laws are referred to the delegation from the locality affected, and there is no opposition and very little investigation and consideration. In the Iowa constitutional convention of 1857 Mr. Harris stated that while a member of the State legislature he had, along with others, opposed from the outset the enactment of local and special laws: that they adhered to their stand until they were compelled to either cease opposition or lose their influence upon more important questions in the form of general laws.¹¹⁸ The enormous number of bills that are introduced in our modern assemblies makes it impossible for any one member of the legislature to know what is going on. Necessity has developed the committee system and coöperation, often to the extent that unwholesome log-rolling is necessary in order that a legislator secure the favorable action of the body upon any measure in which he is especially interested.

The demand for special and local legislation grows almost in proportion to the ease with which it is secured. If localities and interests secure legislation without trouble they soon learn to expect favorable legislation along almost any line. Legislatures may form the habit of legislating for particular objects rather than along the line of general principles. In the wake of too much special legislation legislatures in time come to distrust themselves: they shift the responsibilities of legislation upon the State executive. This is done through a willingness to let poorly worked out measures and special acts pass with the excuse that the Governor will veto unwholesome measures.

The judicial branch of the government has also learned not to respect too highly the work of the legislature. In a recent case the Supreme Court of Pennsylvania said in regard to the constitutional restrictions against local and special legislation:

It was a wise provision and will be sternly enforced. It is our purpose to adhere rigidly to that instrument, that the people may not be deprived of its benefits. It ought to be unnecessary for this court to make this judicial declaration, but it is proper to do so, in view of the amount of legislation which is periodically placed upon the statute book in entire disregard of the fundamental law.¹¹⁹

This thrusting upon the courts of statutes repugnant to the fundamental law has done much to lessen the respect of the judiciary for the legislature.

The practice of enacting special and local legislation has often become the stronghold of corruption in legislative bodies. It affords the political boss and his backers a powerful aid in granting or withholding special

privileges and advantages. It wastes time: it has been one of the greatest factors in accelerating the tendency to increase the power of the executive department at the expense of the legislative branch of the government. It has decreased the respect of the people for legislative bodies and of the individual legislator for the body in which he sits. And finally, special legislation seems to be, in part at least, responsible for the widely deplored retrogression of State legislatures.

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²³ See note 22 above.

²⁴ *House Journal*, 1864, pp. 260, 318.

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²⁶ *House Journal*, 1868, p. 455.

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³⁹ *The Des Moines Register and Leader*, February 4, 1904, p. 2.

⁴⁰ *Senate Journal*, 1906, pp. 438, 472; *House Journal*, 1906, pp. 540, 634, 737, 738.

⁴¹ *Senate Journal*, 1906, pp. 782, 783.

⁴² *Senate Journal*, 1906, pp. 783-785.

The newspapers of the State were full of references to the lobbies at work during the session of the Thirty-first General Assembly. The following is an example of some of the charges: "*Iowa Falls Sentinel*: J. W. Blythe

earns a salary of \$25,000 a year as attorney for the Burlington railroad, and his principal occupation is controlling the politics of the state and blocking any legislation derogatory to the interest of the railroad which he represents.'— *The Register and Leader* (Des Moines), February 16, 1906.

⁴³ *House Journal*, 1906, p. 146.

⁴⁴ *House Journal*, 1907, pp. 30, 31.

⁴⁵ *House Journal*, 1907, in re H. F. 25, pp. 142, 587, 598.

⁴⁶ *House Journal*, 1911, in re H. F. 557, pp. 1231, 1372.

⁴⁷ *House Journal*, 1913, pp. 1090, 1091, 1860.

⁴⁸ *House Journal*, 1913, in re H. F. 496, pp. 818, 1358.

⁴⁹ *House Journal*, 1915, in re H. F. 201, pp. 265, 346, 873, 1001, 1166, 1167, 1168; *Senate Journal*, 1915, pp. 1013, 1097, 1506.

⁵⁰ See Ray's *An Introduction to Political Parties and Practical Politics*, pp. 413-415.

⁵¹ From a pamphlet prepared by the Illinois Legislative Voters' League in 1903, quoted in Reinsch's *American Legislatures and Legislative Methods*, p. 261.

⁵² *House Journal*, 1896, p. 1118.

⁵³ *House Journal*, 1897, pp. 91, 92, 1898, p. 838.

⁵⁴ *House Journal*, 1890, p. 584.

⁵⁵ *House Journal*, 1915, p. 2021.

⁵⁶ See Ray's *An Introduction to Political Parties and Practical Politics*, pp. 396-405.

⁵⁷ See Reinsch's *American Legislatures and Legislative Methods*, pp. 257, 258, 259; *House Journal*, 1913, p. 942; *Senate Journal*, 1886, p. 333.

⁵⁸ *House Journal*, 1878, p. 36.

⁵⁹ *Senate Journal*, 1886, p. 333.

⁶⁰ *House Journal*, 1913, p. 723.

⁶¹ *Senate Journal*, 1915, p. 42.

⁶² *Senate Journal*, 1915, pp. 257, 295.

⁶³ See *House Journal*, 1909, pp. 959, 1513; *The Register and Leader* (Des Moines), April 6, 7, 8, 9, 10, 1909.

⁶⁴ Ray's *An Introduction to Political Parties and Practical Politics*, pp. 406, 407, 421; Reinsch's *American Legislatures and Legislative Methods*, pp. 238, 266-274.

⁶⁵ Ray's *An Introduction to Political Parties and Practical Politics*, p. 434.

⁶⁶ Illustration of "Regulator" bills in the Illinois legislature: "'Regulator' is strictly a trade term and means a bill introduced to compel a corporation or an interest to yield graft. Among the standard 'regulators' in Illinois are bills to govern or restrict the handling of cattle at stock-yards, bills to reduce or abolish the switching charge swindle, bills to limit the number of cars in a freight-train, bills to hamper sleeping-car and express companies, bills to harass the electric light and gas interests, and bills to reform the barbarous laws and practices referring to workmen's injuries."

"The money paid to kill these measures or to secure desired legislation was kept until a month or so after the close of the session, when, if all had gone well, the division" of the "Jack pot" was made.

Some Illinois Regulators of 1909 and their Price

Sleeping car regulators.....	\$25,000
Automobile regulators	5,000
Hotel regulators	4,000
Capital stock	50,000
Insurance regulators	25,000
Banking regulators	25,000
Telegraph regulators	25,000
Gas, electric light and power.....	40,000
Express company	25,000
Stock yard regulators.....	25,000
Cold storage	25,000
Employment office	4,000
Anti-local option	75,000
Anti-trust bills	50,000
Street paving	40,000
Fish bills	3,000

C. E. Russell's *What Are You Going to do about It?* in the *Cosmopolitan Magazine*, Vol. 49, pp. 466-478 (1910).

⁶⁷ Reinsch's *American Legislatures and Legislative Procedure*, pp. 254, 255.

⁶⁸ Adams's *The Joke's on You in The American*, Vol. LXX, pp. 50-59.

⁶⁹ Ray's *An Introduction to Political Parties and Practical Politics*, pp. 418, 419.

⁷⁰ *World's Work*, Vol. XXVII, p. 491.

⁷¹ *Laws of Iowa*, 1866, Chs. 8, 94, 1868, Chs. 9, 167.

⁷² *House Journal*, 1868, pp. 44, 45.

⁷³ *House Journal*, 1872, pp. 44, 50, 82, 85; *Senate Journal*, 1872, pp. 12, 13.

A bill was introduced in the House during the session of the Fourteenth General Assembly which proposed to make it unlawful for any member of the legislature to receive mileage, postage, stationery, or other perquisite to be paid for out of the State treasury. The bill died in committee.—*House Journal*, 1872, in re H. F. 20, pp. 93, 132, 183, 184, 236, 237.

⁷⁴ *Laws of Iowa*, 1854, Ch. 169, 1866, Ch. 94.

⁷⁵ *House Journal*, 1866, pp. 36, 37.

The following was offered as a concurrent resolution in 1864: “*Resolved* That the *pinchbeck* pens and penholders furnished the members of this General Assembly, be returned to the Census Board with the request that they be deposited in the room of the State Historical Society at Iowa City, as lasting memorials of the virtue and economy of said Board, and of the 10th General Assembly.”—*House Journal*, 1864, p. 618.

⁷⁶ *House Journal*, 1872, pp. 835, 836.

⁷⁷ *Senate Journal* (extra session), 1856, pp. 16, 20.

⁷⁸ *Senate Journal*, 1868, p. 579.

⁷⁹ *House Journal*, 1876, p. 27.

⁸⁰ *Senate Journal*, 1874, p. 96.

⁸¹ *House Journal*, 1882, pp. 40, 43, 127–132.

⁸² For a partial list of the bills introduced into the Iowa legislature proposing to eliminate the free pass system see *House Bills*, 1872, No. 214; *House Bills*, 1882, No. 113; *House Bills*, 1884, No. 240, 278, 295, 384; *Senate Bills*, 1884, No. 37, 70; *House Bills*, 1886, No. 29; *House Bills*, 1888, No. 5, 250; *Senate Bills*, 1888, No. 16; *House Bills*, 1900, No. 180; *House Bills*, 1902, No. 110; *Senate Bills*, 1904, No. 137; *House Bills*, 1906, No. 354; *Senate Bills*, 1906, No. 12.

For the action taken upon these bills see the journals under the indexes of bills.

⁸³ *House Journal*, 1886, pp. 30–32.

⁸⁴ *University of Pennsylvania Law Review*, Vol. LXIV, p. 835.

⁸⁵ *House Journal*, 1866, pp. 235–238.

⁸⁶ See *The Des Moines Weekly Leader*, March 3, 1892, p. 1.

⁸⁷ See *The Des Moines Weekly Leader* for 1890 — especially the issues for January 30, February 6, 13, 20, 27.

⁸⁸ *House Journal*, 1842-1843, p. 250.

⁸⁹ *House Journal*, 1898, p. 265; see also *House Journal*, 1888, pp. 580, 581.

⁹⁰ *Senate Journal*, 1892, pp. 256, 352, 353, 439, 486.

⁹¹ *House Journal*, 1892, pp. 123, 137, 227, 503, 678, 768-770.

⁹² *House Journal*, 1897, pp. 773-777, 1898, pp. 8, 9, 64, 65, 86.

⁹³ *House Journal*, 1900, pp. 67, 70, 71, 1902, in re H. F. 439.

⁹⁴ *House Journal*, 1907, p. 629.

⁹⁵ Manuscript report of the efficiency engineers — Quail, Parker and Co. — employed by the Joint Committee on Retrenchment and Reform, pp. 10, 11.

⁹⁶ *Senate Journal*, 1915, pp. 41, 42.

⁹⁷ *Senate Journal*, 1915, pp. 75, 135, 206, 207.

⁹⁸ *Senate Journal*, 1915, pp. 209, 210.

⁹⁹ *Senate Journal*, 1915, pp. 370-373.

¹⁰⁰ *Laws of Iowa*, 1848-1849, Ch. 17, p. 38, 1854-1855, Ch. 75, p. 109.

¹⁰¹ *Senate Journal*, 1856-1857, p. 242.

¹⁰² *Senate Journal*, 1860, pp. 593-615; *House Journal*, 1860, pp. 113, 138; *Revision of 1860*, Secs. 148-162, 177-179.

¹⁰³ See *House Journal*, 1862, pp. 93, 96, 167; *Senate Journal*, 1862, pp. 93, 94; *Senate Journal*, 1870, in re S. F. 200, p. 574; *House Journal*, 1872, p. 121.

¹⁰⁴ See *Code of 1873*, Secs. 94-110; *House Journal*, 1874, in re H. F. 19, pp. 84, 321, 563-565; *Senate Journal*, 1874, pp. 89, 208, 371, 374; *Senate Journal*, 1874, in re H. F. 19 and S. F. 17.

¹⁰⁵ *Senate Journal*, 1874, pp. 370, 371.

¹⁰⁶ *House Journal*, 1882, in re H. F. 383; *Senate Journal*, 1884, in re S. F. 96.

¹⁰⁷ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 66, 67. See also *House Journal*, 1888, p. 20 and in re H. F. 233, 322; *Senate Journal*, 1888, p. 73.

¹⁰⁸ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 375.

¹⁰⁹ *House Journal*, 1897, pp. 164, 607-621, 630, 644, 663, 674-676, 705, 715.

¹¹⁰ *House Journal*, 1900, pp. 126-130.

¹¹¹ *House Journal*, 1900, p. 649. See also pp. 537, 556, 645.

¹¹² *House Journal*, 1900, in re H. F. 88, 405; *Senate Journal*, 1900, in re S. F. 70 and H. F. 405.

¹¹³ *House Journal*, 1907, in re H. F. 160, p. 209; *Senate Journal*, 1907, in re S. F. 26, pp. 174, 635-637, 1168, 1169; *Senate Journal*, 1911, in re S. F. 9, p. 1251; *Iowa Documents*, 1911, Vol. I, p. 20.

¹¹⁴ *House Journal*, 1915, in re H. F. 550, 557; Manuscript copy of the efficiency engineers — Quail, Parker and Co.—employed by the Joint Committee on Retrenchment and Reform, Appendix XI.

¹¹⁵ For a complete discussion of the distinction between general, special, and local legislation see C. C. Binney's *Restrictions upon Local and Special Legislations in State Constitutions*. See also the writer's paper on *Special Legislation* in *The Iowa Journal of History and Politics*, January, 1917.

¹¹⁶ Orth's *Special Legislation* in *The Atlantic Monthly*, Vol. 97, p. 69.

¹¹⁷ Liser's *Report on the Evils of Special and Local Legislation* in *Report of the Ninth Annual Meeting of the Maryland State Bar Association*, 1904, p. 174.

¹¹⁸ *The Debates of the Constitutional Convention*, 1857, Vol. I, p. 565.

¹¹⁹ *Morrison v. Bachert*, 120 Pa. 322, cited in and quoted from *Report of the Fourth Annual Meeting of the Pennsylvania Bar Association*, 1898, p. 121.

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